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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. [illegible] 65

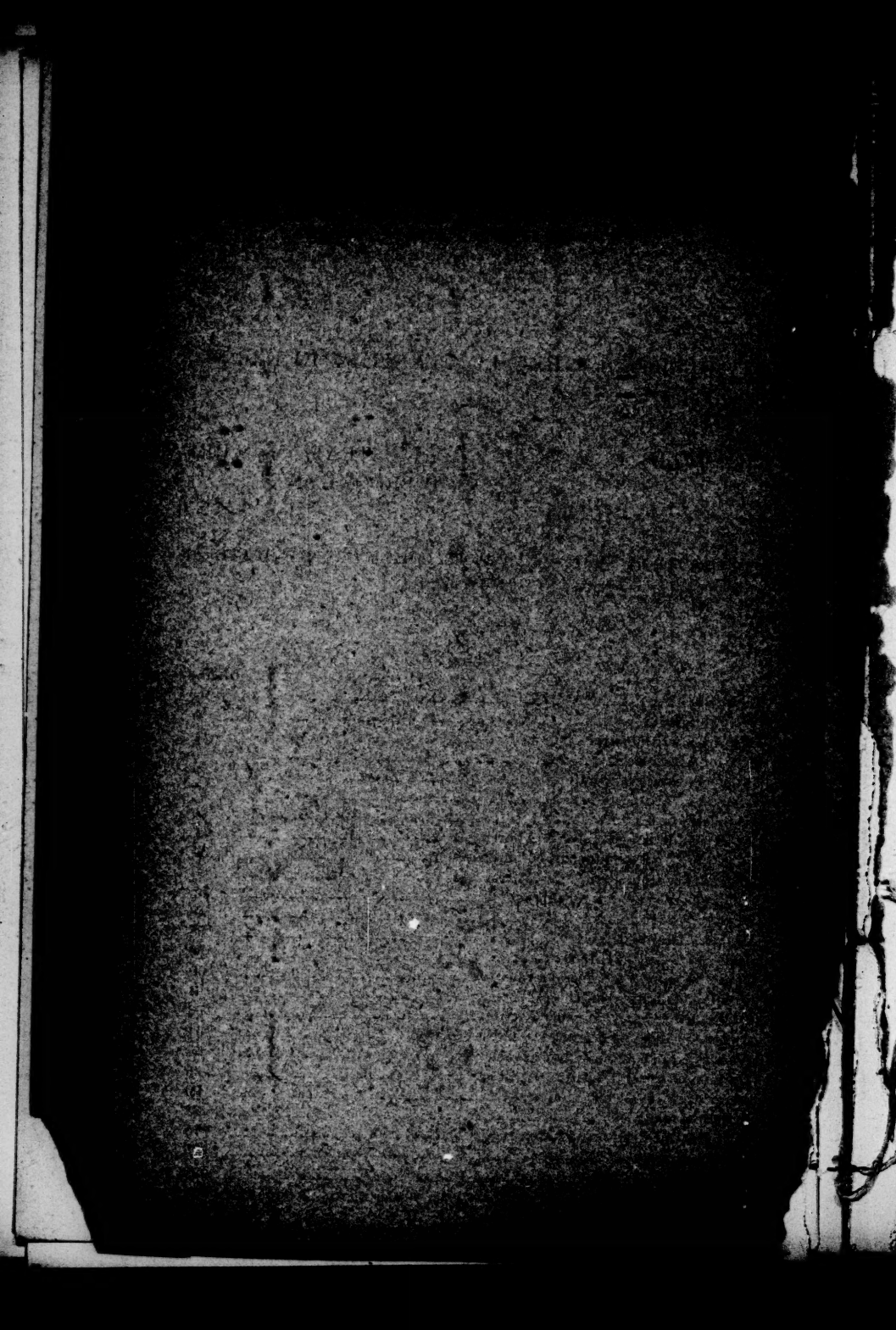
GEORGE S. WHEELER, PLAINTIFF IN ERROR,

vs.

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 23, 1887.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 980.

GEORGE S. WHEELER, PLAINTIFF IN ERROR,

vs.

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 6, 1887.

1 *Appeal Papers.*

Court of Appeals.

GEORGE S. WHEELER, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

James Stikeman, attorney for appellant, 18 Broadway, New York city; Almet F. Jenks, attorney for respondent, City Hall, Brooklyn.

2 UNITED STATES OF AMERICA, *ss:*

WHEELER
vs.
JACKSON, as Registrar of Arrears of the City of Brooklyn.

The President of the United States to the honorable the justices of the supreme court of the State of New York, in the second department, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the court of appeals of the State of New York, before the judges thereof, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George S. Wheeler, plaintiff, and Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, defendant therein, wherein was drawn in question the validity of a statute of the State of New York on the ground of its being repugnant to the Constitution of the United States & the decision is in favor of the validity of such statute, a manifest error hath happened to the great damage of said George S. Wheeler, as by his complaint appears, which record was by the the said court of appeals remitted
3 to you to be enforced according to law, and is now in your court, in the office of the clerk of the county of Kings in the said State.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court,, the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

JOHN J. TOWNSEND,
Attorney, 76 Wall Street, New York City.
1—980

The foregoing writ of error is allowed.

SAM'L BLATCHFORD, *A. J. S. C.*

4 [Endorsed:] Supreme Court of the United States. George S. Wheeler, plaintiff in error, against Theodore F. Jackson, as registrar, etc. Writ of error. John J. Townsend, attorney for plaintiff in error, No. 76 Wall St., New York. Filed July 8, 1887.

5 The answer of the justices of the supreme court of the State of New York, in the second department, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

[Seal Kings County.]

JOHN M. RANKEN, *Clerk.*

6 The United States of America to Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1887, pursuant to a writ of error filed in the clerk's office of the county of Kings, in the State of New York, wherein George S. Wheeler, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Blatchford, one of the associate justices of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

SAMUEL BLATCHFORD.

JOHN J. TOWNSEND,

Attorney for Plaintiff in Error, 76 Wall Street, New York City.

7 UNITED STATES OF AMERICA, } ss:
State of New York, County of Kings, }

In the Supreme Court of the United States.

GEORGE S. WHEELER, Plaintiff in Error,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

On the 16th day of July, 1887, before me, a notary public for the State of New York, duly authorized to administer oaths in the county aforesaid, personally appeared H. Rodman Hagner, in the city of Brooklyn, in said county of Kings, who, being by me duly sworn, made oath that on the 8th day of July, 1887, at No. 45

Broadway, in the said city of Brooklyn, county of Kings, in the State of New York, he served upon Theodore F. Jackson, above-named personally a copy of the foregoing citation by delivering such copy — citation to the said Theodore F. Jackson personally and leaving the same with him.

Deponent further says that at the same time he also delivered to and left with the said Theodore F. Jackson a copy of the writ of error allowed in this cause, and also a copy of the bond to the defendant accompanying the same, with a notice of the filing
8 thereof; that he also at the same time exhibited to the said Theodore F. Jackson the foregoing original citation, and deponent knew the person so served to be the defendant above named.

H. RODMAN HAGNER.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, at Brooklyn, in the county of Kings aforesaid, on the day and year aforesaid.

S. N. GARRISON,
Notary Public, Kings Co.

Sworn to before me this 16th day of July, 1887.

[Seal S. N. Garrison, Notary Public, Kings County, N. Y.]

S. N. GARRISON,
Notary Public, Kings Co.

9 [Endorsed:] Supreme Court of the United States. George S. Wheeler, plaintiff in error, against Theodore F. Jackson, as registrar, &c. Original citation and affidavit of service. Jno. J. Townsend, attorney for plaintiff in error, No. 76 Wall street, New York.

10 *Summons.*

Supreme Court.

GEORGE S. WHEELER, Plaintiff,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Defendant.

Trial to be had in the county of Kings.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated December 4th, 1885.

JAMES STIKEMAN,
Plaintiff's Attorney.

11 *Complaint.*

Supreme Court.

GEORGE S. WHEELER,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

Trial to be had in the county of Kings.

The complaint of the plaintiff, by James Stikeman, his attorney, respectfully shows—

That at divers times, stated in Schedule A, hereto annexed, at public auction, held by the collector of taxes and assessments of the city of Brooklyn for the sale of property for unpaid taxes and assessments, and by the registrar of the water department for unpaid water rates, pursuant to chapter 384 of the laws of 1854 and the acts amendatory thereof, he purchased several lots of land, which were sold for the non-payment of taxes, assessments, and water rates, and which were known by the numbers specified in said Schedule A, respectively, each for a term of years, and paid for each lot the sum set opposite the number thereof in said Schedule A, and received from the said collector a certificate of sale of each lot, bearing the date specified in said Schedule A, each declaring him entitled to a lease of the lot therein mentioned for a term of years after the expiration of two years from the date thereof, unless said premises be redeemed within that time.

That at divers times, stated in Schedule B, hereto annexed, at public auction, held by the registrar of arrears of the city of Brooklyn for the sale of property for unpaid taxes, assessments, and water rates, pursuant to chapter 863 of the laws of 1873 and
12 the acts amendatory thereof, he purchased several lots of land, which were sold for non-payment of taxes, assessments, and water rates, and which were known by the numbers specified in said Schedule B, respectively, each for a term of years, and paid for each lot the sum set opposite the number thereof in said Schedule B, and received from the said registrar a certificate of sale of each lot, bearing the date specified in said Schedule B, each declaring him entitled to a lease of the lot therein mentioned for a term of years after the expiration of two years from the date thereof, unless said premises be redeemed within that time.

All of said certificates are recorded in the office of the defendant.

That none of the said lots have been redeemed from said sale, and that the plaintiff is still the legal owner and holder of said certificates.

That on the 6th day of June, 1885, an act was passed by the Legislature of the State of New York entitled "An act to amend chapter 863 of the laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof.'"

That the fifteenth section of said act is in the words following, to wit:

"§ 15. None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed: Provided, however, That no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act, unless such action or special proceeding is commenced within six months after the passage of this act and notice
13 thereof filed in the office of the registrar of arrears, but this provision shall not operate to extend any statute of limitations now applicable in such cases. And after the expiration of six months from the passage of this act it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no lease shall have been given and no action commenced, and notice thereof filed as aforesaid, within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

That, as plaintiff is advised by his counsel and verily believes, the said section of the said act is wholly unconstitutional and void.

That if the said sales be cancelled in the office of the defendant all public notice of the rights and lien of the plaintiff in the premises will be wholly destroyed, and the plaintiff will sustain irreparable injury and damage.

That, nevertheless, the said defendant threatens and is about to cancel the said sales in his office regardless of the rights of the plaintiff.

Wherefore the plaintiff demands judgment that the defendant, his successors, agents, clerks, and servants, be perpetually enjoined and restrained from cancelling the said sales or the record thereof in his office.

And for such other relief as to the court may seem proper.

JAMES STIKEMAN,
Attorney for Plaintiff.

COUNTY OF KINGS, *ss:*

George S. Wheeler, being duly sworn, says that he is the plaintiff in this action, and that the foregoing complaint is true to his own knowledge.

GEORGE S. WHEELER.

Sworn to before me this 5th day of December, 1885.

H. RODMAN HAGNER,
Notary Public for Kings Co.

14 SCHEDULE A.

Register.	No.	Date.	Amount.
Liber 13	64	Sept. 22, 1856	21 87
	359	Nov. 6, "	32 97
	708–714	" "	29 79
	951	Sept. 29, "	8 14
	952	" "	7 51
	953	" "	6 51
	1774	Oct. 4, "	7 56
	2060	" "	4 54
Liber 14	1097	Aug. 6, 1857	7 33
	1969	July 14, "	13 40
	2223	Sept. 17, "	4 68
	4503	Oct. 14, 1858	28 83
Liber 15	43	June 21, "	3 58
	459	" " "	3 66
	1004	July 2, "	13 87
	1827	" 15, "	3 68
	1946	" " "	6 84
	2006	" 22, "	4 08
	2107	" " "	11 57
	2464	" 8, "	5 93
	2472	" " "	13 25
	2676	Nov. 4, "	2 70
	2792	July 15, "	2 16
	3514	" 29, "	3 62
	3518	" " "	6 68
	4698	Aug. 13, "	20 70
	4894	Feb. 10, 1859	4 63
	4968	Aug. 13, 1858	7 29
Liber 16	262	June 14, 1859	26 56
	456	" " "	3 02
			317 95

15

			317 95
Liber 16	1097	Dec. 22, 1859	7 48
	1420	June 23, "	27 31
	1516	" 30, "	4 72
	1598	" " "	3 14
	1769	" " "	4 72
	1771	" " "	4 72
	1831	July 30, "	14 65
	2392	" 11, "	8 14
	2613	" 14, "	14 81
	2826	" " "	7 54
	3526	Sept. 8, "	4 09

Schedule A—Continued.

Register.	No.	Date.	Amount.
	3531	Sept. 8, 1859	8 08
	4504	Jan. 26, 1860	57 40
	4996	Oct. 13, 1859	11 77
	6470	Nov. 3, "	5 12
	6471	" " "	5 12
Liber 17	246	July 10, 1860	24 03
	442	" 12, "	2 79
	934	" 19, "	27 24
	948	Oct. 2, "	36 91
	996	July 19, "	13 68
	1048	Oct. 2, "	6 26
	1071	July 19, "	4 37
	1336	" 26, "	8 79
	1393	" " "	3 77
	1413	" " "	5 43
	1414	" " "	15 48
	1425	" " "	15 48
	1659	" " "	4 19
	1850	Aug. 2, "	5 61
	1882	" " "	5 61
			693 88
			693 88
Liber 17	2387	Sept. 4, 1860	4 20
	2451	" " "	4 28
	2443	" " "	14 34
	2549	" " "	9 56
	2888	" 11, "	9 49
	2898	" " "	7 18
	2901	" " "	6 66
	2908	" " "	8 34
	2912	" " "	3 58
	2943	" " "	6 33
	2944	" " "	2 19
	2945	" " "	4 30
	2946	" " "	4 30
	2950	" " "	17 93
	3252	" " "	3 93
	3851	" 18, "	4 12
	4322	" 20, "	40 49
	4386	" " "	19 19
	3523	" " "	15 50
	4550	" " "	6 96
	4564	" " "	3 92

Schedule A—Continued.

Register.	No.	Date.	Amount.
	4639	Sept. 25, 1860	4 08
	4861	" " "	4 33
	5784	" " "	3 19
	5758	" 27, "	3 31
	5973	" " "	5 34
	5975	" " "	5 34
Liber 18	916	July 11, 1861	7 49
	1399	" 18, "	5 38
	1400	" " "	15 26
	1467	" " "	2 89
	1539	" " "	2 76
			942 56
17			942 56
Liber 18	1617	Sept. 18, 1861	3 74
	1632	July 11, "	10 64
	1847	" 18, "	9 99
	1951	" 25, "	4 34
	2273	Oct. 22, "	5 07
	2416	July 22, "	3 46
	2464	" " "	9 80
	2474	" " "	3 51
	2545	Sept. 19, "	2 67
	2658	Oct. 22, "	2 54
	2893	" " "	3 31
	2917	" " "	6 71
	2921	" " "	5 41
	2924	" " "	5 06
	2936	" " "	3 08
	2947	" " "	4 46
	2948	" " "	4 02
	2953	" " "	3 13
	2955	Sept. 19, "	15 75
	2971	" " "	21 05
	2984	Oct. 22, "	6 66
	2999	Sept. 19, "	2 78
	3000	" " "	2 28
	3019	Oct. 22, "	3 81
	3222	" " "	2 63
	3243	" " "	3 25
	3244	" " "	2 43
	3246	" " "	3 52
	3247	" " "	4 32
	3270	" " "	7 40

Schedule A—Continued.

Register.	No.	Date.	Amount.
	3307	Oct. 22, 1861	3 55
			1,112 93
18			1,112 93
Liber 18	3308	Oct. 22, 1861	8 82
	3350	" " "	7 80
	3370	" " "	5 75
	3396	" " "	6 97
	3398	" " "	87
	3406	" " "	2 49
	3449	" " "	4 94
	3451	" " "	4 37
	4283	" 3, "	5 71
	4285	" " "	10 33
	4287	" " "	6 22
	4294	" " "	4 16
	4296	" " "	3 13
	4392	" " "	3 64
	4604	" " "	34 42
	4843	" 8, "	20 84
	4853	" " "	15 92
	4867	" " "	436 17
	5006	" " "	6 05
	5023	" 18, "	3 59
	5093	" 8, "	3 82
	5632	" 10, "	2 90
	5855	" " "	2 60
	6388	" 15, "	3 28
	6454	" " "	27 75
	6503	" " "	3 86
	6505	" " "	3 86
Liber 19	38	July 17, 1862	4 24
	380	June 16, "	28 73
	676	" 10, "	2 51
	1326	" 17, "	46 26
			1,834 93
19			1,834 93
Liber 19	1371	June 17, 1862	17 63
	1425	Jan. 13, 1863	6 88
	1766	" " "	10 60
	1812	" " "	4 30
	1821	" " "	7 45

Schedule A—Continued.

Register.	No.	Date.	Amount.
	1822	June 24, 1862	22 39
	1904	Jan. 13, 1863	3 47
	1997	" " "	3 25
	2447	" 20, "	9 49
	2449	" " "	6 58
	2481	" " "	6 58
	2482	" " "	6 58
	2648	" " "	2 53
	2650	" " "	3 41
	2652	" " "	3 41
	2654	" " "	2 64
	2655	" " "	5 59
	3088	M'ch 10, "	9 22
	3411	Feb. 3, "	4 94
	3494	Sept. 10, 1862	18 21
	3495	" " "	18 21
	3533	" " "	11 24
	3547	Feb. 3, 1863	7 50
	3722	" " "	8 22
	3738	" " "	2 96
	4098	" " "	4 49
	4136	Sept. 18, 1862	11 25
	4143	Feb. 3, 1863	8 57
	4146	Sept. 22, 1862	7 69
	4161	Feb. 3, 1863	4 06
	4180	" " "	7 45
	4181	" " "	3 51
			2,085 23
20			2,085 23
Liber 19	4182	Feb. 3, 1863	5 47
	4183	" " "	4 21
	4233	" " "	28 75
	4245	Sept. 18, 1862	8 54
	4246	" " "	10 68
	4264	" " "	7 46
	4265	" " "	2 41
	4289	Feb. 3, 1863	5 48
	4329	Sept. 18, 1862	4 24
	4382	Feb. 3, 1863	6 58
	4486	" " "	2 19
	4521	" 10, "	4 39
	4522	" " "	2 86
	4528	" " "	4 94

Schedule A—Continued.

Register.	No.	Date.	Amount.
	4529	Feb. 10, 1863	6 48
	4557	" 3, "	12 38
	4583	" 10, "	6 70
	4587	" " "	10 11
	4603	" " "	16 04
	4657	" " "	9 22
	4681	" " "	7 02
	4682	" " "	8 01
	4685	" " "	2 15
	4696	" " "	2 96
	4735	" " "	7 83
	4737	" " "	6 58
	5163	Sept. 23, 1862	4 23
	5245	" " "	8 50
	5563	" 30, "	20 02
	6073	Feb. 10, 1863	6 26
	6091	" " "	16 90
			2,334 82
			2,334 82
Liber 19	6093	Feb. 10, 1863	9 55
	6100	" " "	5 87
	6102	Oct. 7, 1862	3 99
	6631	" " "	47 20
	6818	" 16, "	28 89
	6827	Feb. 10, "	22 25
	6838	" " "	631 06
	7006	Oct. 16, "	34 53
	7028	Mch. 10, 1863	33 12
	7031	Feb. 10, "	7 92
	7085	" " "	4 35
	7180	Oct. 23, 1862	33 20
	7200	Feb. 10, 1863	4 63
	7324	Oct. 23, 1862	2 42
	7474	" " "	5 63
	7874	" 30, "	3 93
	8144	Nov. 6, "	2 84
	8287	Feb. 11, 1863	6 83
	8900	" " "	4 41
	9054	Nov. 11, 1862	51 66
	9056	Feb. 11, 1863	55 60
	9057	" " "	37 44
	9112	" " "	24 23
	9130	Nov. 11, "	5 45

Schedule A—Continued.

Register.	No.	Date.	Amount.
Liber 20	203	Nov. 10, 1863	64 25
	411	" " "	36 00
	683	Mch. " "	5 67
	684	" " "	5 18
	875	Nov. " "	44 69
	888	" " "	60 15
	934	" " "	21 77
	1293	Mch. 24, "	6 19
			3,645 71
22			3,645 71
Liber 20	1487	M'ch 24, 1863	4 69
	1488	" " "	9 65
	1489	" " "	9 66
	1580	Nov. 10, "	9 23
	1594	" " "	23 08
	1626	M'ch 2, "	98 16
	1773	" 31, "	112 52
	1780	" 24, "	634 81
	1800	" 31, "	37 36
	1822	" 24, "	771 03
	1857	" 31, "	42 48
	1865	" " "	5 83
	1874	" " "	13 50
	1911	" " "	6 51
	1980	" " "	6 13
	2016	" " "	25 74
	2017	" " "	17 91
	2023	" " "	17 92
	2178	" " "	5 00
	2226	" " "	3 18
	2234	" " "	8 07
	2403	April 7, "	7 41
	2426	" " "	5 19
	2514	" " "	5 43
	2543	Nov. 10, "	58 03
	2559	" " "	68 38
	2612	April 7, "	130 97
Liber 21	461	June 16, "	4 86
	708	" 23, "	4 40
	709	" " "	3 67
	716	" " "	3 67
			5,800 18

Schedule A—Continued.

	Register.	No.	Date.	Amount.
23				5,800 18
	Liber 21	749	June 23, 1863	32 97
		766	" " "	11 71
		772	" " "	8 79
		782	" " "	9 53
		785	" " "	10 26
		788	" " "	7 32
		817	" " "	9 53
		836	" " "	15 38
		846	" " "	16 12
		847	" " "	16 12
		954	" " "	10 26
		986	" 30, "	12 46
		988	" 23, "	46 15
		1509	" 30, "	11 96
		1550	" " "	4 64
		1567	" " "	7 07
		1568	" " "	26 59
		1572	" " "	24 17
		1657	" " "	3 67
		1665	" " "	19 28
		1745	" " "	3 53
		2163	July 14, "	16 91
		2287	June 21, "	12 12
		2289	" " "	7 90
		2311	" " "	7 90
		2312	" " "	7 90
		2422	" " "	5 04
		2457	" " "	4 85
		2980	Sept. 8, "	5 63
		3038	" " "	22 57
		3049	" " "	5 79
		3147	" " "	14 42
				6,218 72
24				6,218 72
	Liber 21	3157	Sept. 8, 1863	10 52
		3193	" " "	9 10
		3314	" 22, "	3 21
		3666	" " "	5 22
		3700	" 29, "	14 56
		3708	" " "	10 54
		3710	" " "	9 11
		3735	" " "	9 11

Schedule A—Continued.

Register.	No.	Date.	Amount.
	3736	Sept. 29, 1863	4 07
	3737	" " "	7 24
	3740	" " "	4 78
	3741	" " "	36 70
	3783	" " "	36 36
	3790	" " "	10 82
	3791	" " "	13 70
	3793	" " "	5 36
	3795	" " "	5 94
	3815	" " "	5 94
	3837	" " "	6 52
	3863	" " "	5 08
	3892	" " "	7 94
	3971	" " "	2 54
	3990	" " "	5 08
	3991	" " "	2 86
	3995	" " "	5 79
	3996	" " "	7 80
	4016	" " "	15 56
	4044	" " "	3 77
	4045	" " "	6 49
	4046	" " "	11 69
	4061	" " "	18 45
			6,520 55
25			6,520 55
Liber 21	4108	Sept. 29, 1863	11 40
	4130	" " "	8 52
	4131	" " "	9 82
	4136	" " "	2 68
	4147	" " "	2 21
	4188	" " "	9 75
	4190	" " "	7 94
	4461	Oct. 6, 1863	4 91
	4530	" " "	10 35
	4743	" " "	23 81
	5169	" " "	8 34
	5183	" " "	7 65
	5185	" " "	24 03
	5187	" " "	13 11
	5194	" " "	7 65
	5196	" " "	4 93
	5293	" " "	6 30
	5556	" 13, "	58 18

Schedule A—Continued.

Register.	No.	Date.	Amount.
	5709	Oct. 13, 1863	26 19
	5841	" " "	14 62
	5859	" " "	9 05
	5880	" " "	4 77
	5943	" 20, "	5 27
	6066	" " "	2 69
	6075	" " "	5 27
	6320	" " "	26 53
	6509	" " "	4 61
	6654	" 27, "	2 59
	6655	" " "	2 47
	6656	" " "	2 47
	6745	" " "	8 84
	6908	" " "	14 77
			6,872 27
26			6,872 27
Liber 21	7038	Oct. 27, 1863	17 28
	7140	" " "	4 71
	7202	" 23, "	8 91
	7284	" 27, "	5 11
	7404	" " "	29 13
	7405	" " "	42 22
	7406	" " "	10 20
	7449	" " "	31 32
	7453	" " "	4 38
	7467	" " "	6 56
	7468	" " "	6 56
Liber A	14	Sept. 13, 1855	9 91
	40	Aug. 31, 1855	81 73
	855	Nov. 13, 1856	60 55
	3634	July 15, 1858	7 77
	4490	Oct. 21, 1858	58 79
Liber B	135	" 2, 1860	8 41
	136	" " "	8 41
	137	" " "	8 41
	138	" " "	8 41
	226	" 23, "	10 99
	232	" " "	5 18
	661	" " "	26 72
	674	M'ch 31, 1863	9 50
	676	Oct. 16, 1860	32 67
	844	" " "	27 28
	845	" " "	27 28

Schedule A—Continued.

Register.	No.	Date.	Amount.
	848	Oct. 16, 1860	27 28
	849	" " "	27 28
	850	" " "	27 28
	851	" " "	27 28
			7,539 78
27			7,539 78
Liber B	852	Oct. 16, 1860	27 28
	853	" " "	27 28
	854	" " "	27 28
	855	" " "	27 28
	856	" " "	27 28
	857	" " "	27 28
	858	" " "	27 28
	859	" " "	27 28
	863	" " "	27 28
	1523	" 9, "	5 33
	1524	" " "	5 33
	1525	" " "	5 33
	1526	" " "	5 33
	1527	" " "	5 33
	1528	" " "	5 19
	1732	April 14, 1863	6 26
	1769	Feb. 19, 1861	122 10
	2068	Mc'h 5, "	30 22
	2377	" " "	4 29
	2722	April 12, 1864	24 67
	3303	M'ch 26, 1861	6 79
Liber C	85	Feb. 18, 1862	3 61
	280	Dec. 12, 1865	197 85
	288	" " "	214 00
	290	" " "	216 09
	291*a*	" " "	236 07
	408	Feb. 18, 1862	53 55
	674	" " "	48 48
	984	" " "	20 78
	985	" " "	23 03
	986	" " "	22 72
	1103	M'ch 11, 1860	10 83
			9,058 48
28			9,058 48
Liber C	1324	July 12, 1864	5 48

Schedule A—Continued.

Register.	No.	Date.	Amount.
	1352	July 12, 1864	11 41
	1457	Feb. 13, 1866	414 64
	1492	April 12, 1864	159 66
	1519	July 12, "	14 98
	1531	" " "	92 17
	1532	" " "	92 17
	1534	" " "	35 54
	1539	" " "	90 57
	1553	" " "	150 65
	1563	" " "	94 98
	1565	May 19, 1863	72 35
	1762	M'ch 28, "	10 15
	1805	May " "	4 50
	1806	" " "	61 82
	1809	" " "	56 30
	1811	" " "	56 26
	2368	June 4, 1863	5 64
	2369	" " "	5 88
	2637	" " "	14 33
	2873	" " "	9 71
	2940	" 11, "	5 04
	2941	" " "	5 04
	2942	" " "	5 04
	2943	" " "	5 04
	2944	" " "	5 04
	2945	" " "	5 04
	2946	" " "	5 04
	2947	" " "	5 04
	2948	" " "	5 04
	2949	" " "	5 04
			10,568 07
29 Liber C.	2950	June 11, 1863	5 04
	2951	" " "	5 04
	2952	" " "	5 04
	2953	" " "	5 04
	2954	" " "	5 04
	2955	" " "	5 04
	2956	" " "	5 04
	2979	" " "	4 12
	2984	" " "	5 04
	2985	" " "	5 04
	3002	" " "	5 04
	3285	" " "	16 00

Schedule A—Continued.

Register.	No.	Date.	Amount.
Liber D.	133	Feb. 16, 1864	83 37
	187*a*	April 27, 1865	57 70
	446	Feb. 14, 1864	229 00
	554	Feb. 23, 1864	4 13
	1898	May 9, 1865	4 81
	1954	" " "	5 04
	1956	" " "	5 05
	1957	" " "	5 04
	1998	" " "	3 90
	2005	" " "	3 89
	2025	" " "	4 06
	2027	" 19, "	11 65
Liber E.	12	Jan. 22, 1867	65 48
	78	" " "	53 44
	79	" " "	53 44
	387	" " "	57 05
	506	" " "	18 75
	507	" " "	18 75
	554	" " "	18 75
	556	" " "	18 75
			11,360 64
30			11,360 64
Liber E	563	Jan. 22, 1867	13 40
	564	" " "	18 75
	565	" " "	18 75
	566	" " "	18 75
	567	" " "	18 75
	583	" " "	18 75
	590	" " "	18 75
	591	" " "	18 75
	614	" " "	18 75
	617	" " "	9 49
	618	" " "	10 50
	619	" " "	11 50
	620	" " "	12 50
	663	" " "	7 17
	668	M'ch 5, "	18 89
	679	" " "	9 08
	688	" " "	18 89
	689	" " "	18 89
	690	" " "	18 89
	682	" " "	18 89
	685	" " "	18 89

Schedule A—Continued.

Register.	No.	Date.	Amount.
	686	M'ch 5, 1867	18 89
	687	" " "	18 89
	691	" " "	18 89
	693	" " "	18 89
	779	" " "	18 89
	783	" " "	18 89
	784	" " "	18 89
	785	" " "	18 89
	788	" " "	18 89
	791	" " "	19 75
			11,887 38
31			11,887 38
Liber E	863	M'ch 5, 1867	29 63
	1171	" " "	36 18
	1421	" 12, "	9 06
	1422	" 13, "	8 76
	1539	" 12, "	51 19
	1540	" " "	17 71
	1541	" " "	17 71
	1753	" " "	6 96
	2340	April 2, "	32 75
	2483	" " "	2 89
	3097	M'ch 9, 1869	41 43
	3098	" " "	43 18
	3099	" " "	43 18
	3100	" " "	43 18
	3101	" " "	43 18
	3602	" " "	4 85
	3640	" " "	28 96
	3641	" " "	151 83
	3642	" " "	32 48
	3643	" " "	23 66
	3644	" " "	15 19
	3696	" " "	312 49
	3741	" " "	227 25
	3913	" 16, "	89 00
	3914	" " "	89 00
	3938	" " "	113 64
	4444	" " "	10 04
	4449	" " "	10 04
	4450	" " "	10 04
Liber F	111	" 23, "	4 25

Schedule A—Continued.

	Register.	No.	Date.	Amount.
		113	M'ch 23, 1869	5 98
		175	" " "	2 90
				13,345 97
32				13,345 97
	Liber F	180	M'ch 23, 1869	5 75
		301	" " "	20 37
		302	" " "	7 37
		399	May 26, 1870	6 13
		447	M'ch 23, 1869	8 18
		638	" " "	6 28
		698	" " "	6 28
		778	" " "	4 82
		780	" " "	4 82
		975	May 3, 1870	2 97
		986	" " "	3 45
		1173	" " "	4 58
		1517	" 5, 1870	21 60
		1536	" " "	12 01
		1540	" " "	5 66
		1597	" " "	3 62
		1632	" " "	104 51
		1636	" " "	6 00
		1643	" " "	4 43
		1645	" " "	152 36
		1693	" " "	7 34
		1704	" " "	8 24
		1838	" 7, "	10 01
		1851	" " "	10 01
		1852	" " "	10 01
		1866	" 5, "	8 76
		1975	" " "	52 36
		1980	" 7, "	11 12
		3007	" 10, "	100 00
		3041	" " "	80 51
		3042	" " "	183 74
				14,219 26
33				14,219 26
	Liber F	3043	May 10, 1870	60 95
		3308	" " "	20 00
		3334	" " "	8 73
		3620	" 20, "	82 18

Schedule A—Continued.

Register.	No.	Date.	Amount.
Liber G	71	M'ch 14, 1871	118 25
	72	" " "	118 25
	73	" " "	118 25
	181	" " "	110 24
	439	" " "	144 91
	440	" " "	137 85
	441	" " "	105 22
	445	" " "	55 28
	1614	" 21, "	91 52
	1648	" " "	5 95
	1649	" " "	2 96
	1663	" " "	5 22
	1807	" " "	11 39
	1907	" " "	46 63
	1924	" " "	297 66
	1938	" " "	90 87
	2435	" " "	10 14
	2477	" " "	4 61
	2505	" " "	88 66
	2508	" " "	32 26
	2587	" " "	46 63
	2590	" " "	82 02
	2601	" " "	13 46
	2610	" " "	25 62
	2668	" " "	44 42
	2669	" " "	16 78
	2693	" 23, "	51 06
	2742	" " "	13 46
			16,280 69
34			16,280 69
Liber G	2754	M'ch 23, 1871	10 14
	2755	" " "	42 21
	2932	" " "	34 75
Liber H	361	Feb. 20, 1872	10 30
	1013	" 10, "	45 16
	3492	" 27, "	10 49
	3493	" " "	25 45
	4025	" " "	61 29
	4316	M'ch 1, "	48 25
	4649	" " "	137 85
Liber 19	7231	Feb. " 1863	15 57
Liber 21	3811	Sept. 29, "	15 86
	5985	Oct. 20, "	16 07

Schedule A—Continued.

Register.	No.	Date.	Amount.
Liber B	178	Oct. 2, 1860	10 87
Liber C	640	Feb. 18, 1862	175 84
	641	" " "	175 84
	1850	May 28, 1863	4 50
Liber E	749	M'ch 5, 1867	18 89
	3249	" 9, 1869	62 46
	3905	" 16, "	78 92
	4154	" " "	7 08
Liber G	89	" 14, 1871	25 57
	452	" " "	30 31
	488	" " "	117 78
	489	" " "	117 78
	496	" " "	117 78
	575	" " "	91 83
	693	" " "	5 64
	1427	" " "	15 93
	1503	" 21, 1871	27 54
	1636	" " "	33 90
			17,872 54
35			17,872 54
Liber G	1661	M'ch 21, 1871	3 24
	1666	" " "	17 75
	1667	" " "	4 18
	1674	" " "	15 01
	1690	" " "	22 37
	1693	" " "	98 43
	1707	" " "	4 37
	1809	" " "	8 02
	1822	" " "	174 25
	1923	" " "	57 69
	1927	" " "	49 95
	1999	" " "	18 99
	2028	" " "	155 01
	2069	" " "	6 82
	2119	" " "	52 16
	2162	" " "	16 78
	2272	" " "	27 83
	2291	" " "	37 79
	2297	" " "	28 94
	2308	" " "	10 14
	2374	" " "	4 61
	2382	" " "	24 52
	2443	" " "	43 32

Schedule A—Continued.

Register.	No.	Date.	Amount.
	2447	M'ch 21, 1871	33 36
	2452	" " "	43 32
	2484	" " "	31 15
	2488	" " "	57 69
	2499	" " "	54 37
	2511	" " "	3 51
	2539	" " "	20 09
	2565	" " "	38 89
	2573	" " "	38 89
			19,075 98
36			19,075 98
Liber G	2607	M'ch 21, 1871	22 31
	2630	" " "	30 05
	2670	" " "	30 05
	2675	" " "	26 73
	2679	" 23, "	7 93
	3033	" " "	83 53
	3034	" " "	31 33
	3092	" " "	7 69
	3405	" 28, "	7 81
	5286	" 25, 1873	23 87
	5287	" " "	7 22
Liber H	94	Feb. 20, 1872	16 79
	195	" " "	15 32
	901	Sept. 10, 1872	27 03
	935	" " "	63 13
	936	" " "	63 13
	937	" " "	63 13
	1062	Feb. 20, "	54 31
	1114	" " "	58 42
	1115	" " "	70 13
	1116	" " "	25 46
	1518	" 23, "	55 74
	1523	" " "	75 74
	2420	Sept. 10, "	137 01
	3009	Feb. 23, "	11 89
	3204	" 27, "	11 87
	3211	" " "	11 87
	3449	" " "	4 58
	3579	" " "	27 80
	4098	Mch. 1, "	44 23
	4333	" " "	48 25
			20,240 33

Schedule A—Continued.

Register.	No.	Date.	Amount.
37			20,240 33
Liber H	4744	Mc'h 1, 1872	15 54
Liber I	295	April 22, 1873	113 94
	1245	Feb. 25, "	105 44
	1246	" " "	105 44
	1834	" " "	42 16
	2234	May 6, 1874	39 20
	2235	" " "	49 24
	2254	" " "	32 15
	2499	Feb. 25, 1873	91 08
	2540	M'ch 25, "	103 61
	2541	" " "	103 61
	2542	" " "	103 61
	2543	" " "	103 61
	2588	" " "	103 61
	2763	" " "	28 53
	3068	Feb. 25, "	74 59
	3069	" " "	32 84
	3070	" " "	62 34
	3183	" " "	55 76
	5313	May 25, "	10 41
	5531	" 6, "	4 46
	5539	" " "	22 27
	5593	Feb. 25, "	9 69
	5611	" " "	9 69
	5768	" " "	10 67
	5870	May 6, "	14 96
	6000	" " "	3 22
	6105	" " "	32 73
	6122	" " "	15 41
	6183	" " "	18 84
	6233	" " "	7 98
	6237	" " "	7 26
			21,774 22
38			21,774 22
Liber I	6262	May 6, 1873	53 52
	6268	" " "	4 14
	6378	" " "	15 41
	6380	" " "	11 89
	6387	Jan. 28, "	533 93
	6440	" " "	3 50
Liber 1	63	Feb. 25, 1868	19 87
	87	Jan. 28, "	18 70

Schedule A—Continued.

Register.	No.	Date.	Amount.
	746	June 9, 1868	5 98
	747	" " "	5 98
	748	" " "	5 98
	749	" " "	5 98
	750	" " "	5 98
	751	" " "	5 98
	752	" " "	5 98
Liber 2	115	Feb. 4, "	17 71
	142	" " "	16 63
	1149	June 9, "	6 83
	1150	" " "	6 83
	1151	" " "	6 83
	1152	" " "	6 83
	1153	" " "	6 83
	1154	" " "	6 83
	1155	" " "	6 83
	1536	" " "	6 53
	1537	" " "	6 53
	1538	" " "	6 53
	1539	" " "	6 53
	1540	" " "	6 53
	1541	" " "	6 53
	1542	" " "	6 53
			22,604 90
			22,604 90
Liber 3	114	Nov. 24, 1868	5 12
	189	" " "	17 90
	212	" " "	33 30
	247	" " "	17 90
	571	Dec. 1, 1868	35 05
	578	" " "	33 50
	704	Dec. 8, 1868	14 14
	910	" " "	10 25
	913	" " "	21 87
	914	" " "	6 99
	915	" " "	6 38
	916	" " "	18 00
	1011	" " "	14 14
Liber 4	1	Nov. 23, 1869	3 02
	58	" " "	14 82
	92	" " "	16 36
	103	" " "	5 12
	177	" " "	11 74

Schedule A—Continued.

Register.	No.	Date.	Amount.
	178	Nov. 23, 1869	13 28
	179	" " "	13 28
	258	" " "	16 56
	281	" " "	6 35
	282	" " "	10 20
	284	" " "	10 20
	323	" " "	17 90
	324	" " "	8 66
	325	" " "	13 28
	326	" " "	19 44
	327	" " "	10 20
	328	" " "	11 74
	329	" " "	5 27
	332	" " "	13 28
			23,060 14
40			23,060 14
Liber 4	357	Nov. 23, 1869	11 42
	479	" " "	14 82
	485	" " "	33 30
	497	" " "	8 20
	577	Nov. 30, 1869	14 05
	637	" " "	6 35
	717	" " "	10 20
	719	" " "	26 19
	720	" " "	6 35
	787	" " "	14 05
Liber 5	72	Nov. 27, 1870	16 36
	80	" 22, "	5 11
	160	" " "	17 90
	263	" " "	14 02
	276	" " "	15 36
	300	" " "	2 82
	456	" " "	33 30
	675	" 29, "	10 20
	676	" " "	21 75
	677	" " "	6 95
	678	" " "	6 35
	679	" " "	17 90
	730	" " "	14 05
Liber 6	86	Dec. 6, "	13 94
	150	" " "	15 37
	305	" " "	16 80
	401	" " "	16 80
	487	" " "	20 37

Schedule A—Continued.

Register.	No.	Date.	Amount.
	500	Dec. 6, 1870	13 94
	722	" 13, "	23 49
	750	" " "	15 37
			23,523 30
41			23,523 30
Liber 6	798	Dec. 13, 1870	9 05
	856	" " "	31 10
	995	" 20, "	13 22
	1216	" " "	9 65
	1217	" " "	20 37
	1218	" " "	6 63
	1221	" " "	6 07
	1222	" " "	20 37
	1294	" " "	13 22
	1484	Nov. 25, 1871	4 53
Liber 7	118	" 28, "	5 41
	349	" " "	17 20
	358	" " "	6 55
	438	" " "	20 75
	444	" " "	14 36
	516	Dec. 5, "	32 89
	570	" " "	6 57
	579	" " "	19 69
	713	" " "	15 87
	757	" " "	10 15
	813	" " "	31 60
	1004	" " "	6 57
	1019	" " "	14 44
	1121	" " "	21 59
	1276	" " "	8 63
	1338	" " "	13 72
	1456	" " "	13 01
Liber 8	218	Dec. 12, "	14 79
	262	" " "	5 23
	700	" " "	19 37
	709	" " "	13 48
	730	" " "	12 17
			23,981 55
42			23,981 55
Liber 8	781	Dec. 12, 1871	10 86
	782	" " "	9 55

Schedule A—Continued.

Register.	No.	Date.	Amount.
	823	Dec. 12, 1871	10 49
	825	" " "	9 55
	852	" " "	30 26
	898	" " "	4 92
	910	" " "	4 82
	911	" " "	9 17
	915	" " "	4 84
	962	Dec. 19, 1871	14 79
	1326	" " "	12 82
	1369	" " "	4 25
	1510	" " "	6 27
	1692	" " "	7 53
	1698	" " "	16 10
	1701	" " "	16 10
	1702	" " "	6 27
	1722	" " "	20 03
	1763	" " "	9 55
	1764	" " "	19 37
	1765	" " "	6 79
	1767	" " "	6 27
	1783	" " "	3 58
	1788	" " "	6 12
	1792	" " "	4 56
	1843	" " "	3 25
	1987	Dec. 26, 1871	12 17
	2465	" " "	12 17
	2502	Jan. 9, 1872	6 30
	2504	" " "	6 30
	2505	" " "	6 30
			24,282 90
43			24,282 90
Liber 8	2655	Jan. 9, 1872	6 30
	2661	" " "	23 89
	2816	" " "	7 82
	2817	" " "	9 27
	2818	" " "	9 27
	2819	" " "	9 27
	2820	" " "	5 90
	2821	" " "	11 71
	2983	" " "	29 40
	3036	" " "	9 60
	3089	" " "	16 20
	3099	" " "	6 30

Schedule A—Continued.

Register.	No.	Date.	Amount.
	3174	Jan. 9, 1872	9 60
	3225	" " "	11 67
	3254	" " "	5 48
Liber 9	249	Nov. 26, 1872	14 70
	729	" " "	19 25
	751	" " "	13 40
	768	" " "	12 10
	797	" " "	9 50
	798	" " "	5 60
	804	" " "	26 28
	810	" " "	5 40
	811	" " "	11 38
	826	" " "	13 40
	827	" " "	19 74
	832	" " "	10 80
	865	" " "	7 25
	866	" " "	6 25
	924	" " "	30 03
	945	" " "	5 60
	1016	Dec. 3, 1872	14 79
			24,680 05
44			24,680 05
Liber 9	1066	Dec. 3, 1872	12 93
	1440	" " "	5 62
	1575	" " "	6 27
	1762	" " "	20 03
	1853	" " "	6 27
	1982	Dec. 10, 1872	12 17
	2028	" " "	6 27
	2184	" " "	7 81
	2239	" " "	12 82
	2454	" " "	12 17
	2475	" " "	9 55
	2476	" " "	6 27
	2639	" " "	6 27
	2644	" " "	23 73
	2686	" " "	9 54
	2687	" " "	19 90
	2688	" " "	11 45
	2689	" " "	6 90
	2690	" " "	14 79
	2807	" " "	10 52
	2898	" " "	4 29

Schedule A—Continued.

Register.	No.	Date.	Amount.
	2954	Dec. 10, 1872	29 20
	3000	" " "	9 55
	3062	" " "	16 10
	3119	" " "	8 24
	3144	" " "	9 55
	3163	" " "	13 53
	3194	" " "	5 41
Liber 10	552	Dec. 12, 1872	18 47
	1448	Dec. 23, 1872	25 31
	1521	" " "	17 28
			25,058 26
45			25,058 26
Liber 10	1571	Dec. 23, 1872	14 90
	1597	" " "	5 87
	1612	" " "	5 87
	1641	" " "	35 11
	1650	" " "	6 37
	1651	" " "	14 50
	1671	" " "	35 51
	1677	" " "	13 71
	1707	" " "	6 57
	1744	" " "	13 33
	1755	" " "	13 32
	1855	" " "	40 08
	1898	" " "	6 57
	1933	" " "	20 85
	2088	" " "	20 85
	2909	Dec. 30, 1872	16 39
	2995	" " "	6 57
	3305	" " "	17 28
	3536	" " "	7 46
	3574	" " "	24 42
	3911	Jan. 7, 1873	7 50
	3920	" " "	15 00
	4083	" " "	6 53
	4094	" " "	12 00
	4362	" " "	7 26
	4408	" " "	16 50
	4684	" " "	13 91
	4947	" " "	17 40
	5332	Jan. 14, 1873	16 50
	5722*a*	" " "	7 50

Schedule A—Continued.

Register.	No.	Date.	Amount.
	5746	Jan. 14, 1873	7 50
	5761	" " "	32 03
			25,543 42
46			25,543 42
Liber 10	5858	Jan. 14, 1873	11 98
	5859	" " "	26 23
	5860	" " "	14 62
	5861	" " "	8 35
	5862	" " "	21 00
	6043	" " "	5 51
	6131	" " "	39 00
	6234	" " "	12 00
	6434	" " "	21 00
	6539	" " "	9 00
	6577	" " "	12 00
	6581	" " "	12 00
	6606	" " "	16 57
Liber 2	579	Feb. 25, 1868	3 56
	666	" 11, "	6 43
Liber 4	373	Nov. 23, 1869	6 35
Liber 5	343	Nov. 22, 1870	6 35
	380	" " "	16 36
	381	" " "	14 82
	382	" " "	14 05
	674	Nov. 29, 1870	24 06
Liber 6	402	Dec. 6, 1870	6 07
	631	Dec. 13, 1870	6 07
	1450	Nov. 28, 1871	8 32
	1501	" " "	3 24
	1509	" " "	14 77
Liber 7	221	" " "	3 79
	382	" " "	5 63
	399	" " "	13 65
	400	" " "	6 55
	431	" " "	10 10
			25,922 85
47			25,922 85
Liber 7	466	Nov. 28, 1871	14 63
	470	" " "	6 23
	488	Dec. 5, 1871	24 45

Schedule A—Continued.

Register.	No.	Date.	Amount.
	511	Dec. 5, 1871	9 05
	550	" " "	6 57
	838	" " "	15 87
	925	" " "	13 72
	943	" " "	5 86
	1038	" " "	11 58
	1096	" " "	25 88
	1146	" " "	23 02
	1230	" " "	19 66
	1619	" " "	15 87
	1620	" " "	14 44
	1621	" " "	13 72
Liber 8	170	Dec. 12, 1871	13 48
	174	" " "	13 48
	175	" " "	13 48
	434	" " "	3 73
	520	" " "	6 27
	648	" " "	9 55
	686	" " "	8 05
	723	" " "	6 27
	797	" " "	10 86
	832	" " "	4 22
	833	" " "	8 53
	872	" " "	13 48
	895	" " "	17 98
	908	" " "	9 72
	909	" " "	6 48
	932	" " "	3 98
	1287	Dec. 19, 1871	5 62
			26,298 58
48			26,298 58
Liber 8	1295	Dec. 19, 1871	5 62
	1560	" " "	10 86
	1578	" " "	13 48
	1760	" " "	21 34
	1933	Dec. 26, 1871	18 26
	2217	" " "	12 82
	2605	Jan. 9, 1872	6 30
	2724	" " "	12 90
	2871	" " "	4 85
	2994	" " "	26 88
	2995	" " "	14 31
	3073	" " "	10 92

Schedule A—Continued.

Register.	No.	Date.	Amount.
	3122	Jan. 9, 1872	15 94
	3123	" " "	13 56
	3143	" " "	12 24
	3144	" " "	5 44
	3157	" " "	6 30
	3173	" " "	12 90
	3191	" " "	14 88
	3227	" " "	10 77
	3228	" " "	8 33
	3256	" " "	3 87
Liber 9	188	Nov. 26, 1872	13 40
	189	" " "	13 40
	258	" " "	13 40
	437	" " "	3 73
	539	" " "	6 25
	585	" " "	6 25
	672	" " "	6 25
	677	" " "	9 50
	713	" " "	9 50
			26,643 03
49			26,643 03
Liber 9	754	Nov. 26, 1872	19 90
	765	" " "	6 25
	808	" " "	12 10
	824	" " "	3 45
	830	" " "	10 80
	884	" " "	4 21
	885	" " "	8 49
	893	" " "	6 02
	896	" " "	30 70
	928	" " "	16 00
	943	" " "	23 21
	953	" " "	6 04
	966	" " "	16 00
	1064	" " "	22 26
	1234	Dec. 3, 1872	4 32
	1375	" " "	5 62
	1378	" " "	5 62
	1437	" " "	11 78
	1609	" " "	10 86
	1625	" " "	13 48
	1798	" " "	21 34
	1851	" " "	6 27

Schedule A—Continued.

Register.	No.	Date.	Amount.
	1902	Dec. 10, 1872	7 32
	1953	" " "	16 76
	2166	" " "	3 26
	2187	" " "	19 47
	2195	" " "	5 12
	2568	" " "	6 27
	2677	" " "	6 27
	2868	" " "	9 11
	2896	" " "	4 29
	2959	" " "	39 58
			27,025 20
			27,025 20
50 Liber 9	3100	Dec. 10, 1872	15 84
	3120	" " "	12 17
	3123	" " "	12 82
	3128	" " "	6 27
	3133	" " "	9 55
	3136	" " "	6 27
	3138	" " "	6 27
	3141	" " "	9 55
	3142	" " "	6 27
	3146	" " "	6 27
	3147	" " "	6 27
	3148	" " "	9 16
	3161	" " "	4 55
	3176	" " "	6 27
	3180	" " "	13 48
	3181	" " "	10 20
	3184	" " "	8 89
	3258	" " "	8 16
	3309	" " "	3 75
Liber 10	444	Dec. 17, 1872	31 56
	564	" " "	17 28
	1006	" " "	4 00
	1191	" " "	7 46
	1242	" " "	7 46
	1388	Dec. 23, 1872	7 46
	1395	" " "	11 92
	1516	" " "	11 92
	1524	" " "	24 42
	1558	" " "	7 46
	1573	" " "	8 95

Schedule A—Continued.

	Register.	No.	Date.	Amount.
		1598	Dec. 23, 1872	8 75
				27,335 85
51				27,335 85
	Liber 10	1613	Dec. 23, 1872	5 87
		1616	" " "	5 87
		1648	" " "	14 90
		1649	" " "	9 50
		1672	" " "	26 80
		1674	" " "	10 14
		1777	" " "	7 46
		1778	" " "	10 53
		1787	" " "	7 12
		1794	" " "	25 04
		1860	" " "	20 85
		1895	" " "	30 75
		1901	" " "	17 28
		1912	" " "	7 16
		1930	" " "	23 23
		1969	" " "	6 50
		1985	" " "	14 50
		1991	" " "	14 50
		2015	" " "	4 03
		2227	" " "	24 78
		2469	" " "	11 09
		2623	Dec. 30, 1872	18 17
		2873	" " "	6 57
		2875	" " "	15 85
		2877	" " "	6 57
		2966	" " "	14 96
		3220	" " "	25 61
		3334	" " "	12 50
		3359	" " "	17 28
		3523	" " "	7 46
		3637	" " "	24 42
		3690	" " "	17 28
				27,800 42
52				27,800 42
	Liber 10	3779	Jan. 7, 1873	8 88
		3858	" " "	19 69
		4142	" " "	7 50
		4231	" " "	31 48

Schedule A—Continued.

Register.	No.	Date.	Amount.
	4232	" " " ------	3 46
	4389	" " " ------	12 80
	5055	Jan. 14, 1873------	65 70
	5167	" " " ------	21 00
	5169	" " " ------	17 40
	5170	" " " ------	5 26
	5172	" " " ------	15 00
	5197	" " " ------	14 52
	5540	" " " ------	7 50
	5835	" " " ------	7 50
	5948	" " " ------	3 98
	6038	" " " ------	5 51
	6103	" " " ------	21 00
	6142	" " " ------	52 94
	6390	" " " ------	7 50
	6399	" " " ------	6 84
	6414	" " " ------	18 60
	6437	" " " ------	17 40
	6496	" " " ------	22 44
	6497	" " " ------	19 80
	6540	" " " ------	15 00
	6545	" " " ------	7 50
	6546	" " " ------	24 00
	6556	" " " ------	7 50
	6567	" " " ------	16 50
	6568	" " " ------	7 50
	6572	" " " ------	7 50
			28,299 62
53			28,299 62
Liber 10------	6573	Jan. 14, 1873------	7 50
	6574	" " " ------	12 00
	6575	" " " ------	7 50
	6578	" " " ------	12 00
	6579	" " " ------	7 50
	6580	" " " ------	15 90
	6582	" " " ------	7 50
	6583	" " " ------	7 50
	6584	" " " ------	7 50
	6585	" " " ------	10 20
	6599	" " " ------	18 60
	6603	" " " ------	4 20
	6629	" " " ------	7 50
	6635	" " " ------	17 40

Schedule A—Continued.

Register.	No.	Date.	Amount.
	6636	Jan. 14, 1873	11 10
	6639	" " "	11 10
	6660	" " "	5 52
	6661	" " "	3 82
	6663	" " "	16 06
	6710	" " "	17 50
	6718	" " "	9 12
			28,516 64

GEO. S. WHEELER.

JAMES STIKEMAN,
Pl'ff's Att'y.

54 SCHEDULE B.

Register.	No.	Date.	Amount.
Liber 32	942	Jan. 12, 1875	17 44
	1218	Jan. 26, 1875	20 44
	1769	Feb. 9, 1875	19 56
	1845	" " "	10 93
	1937	" " "	10 93
	2075	Feb. 23, 1875	24 40
	2188	" " "	12 44
	1667	Jan. 26, 1875	22 32
	2039	Feb. 9, 1875	11 16
Liber K	33	Sept. 29, 1874	31 02
	161	" " "	37 99
	164	" " "	87 95
	188	" " "	17 70
	191	Oct. 6, 1874	47 60
	192	" " "	61 61
	195	Sept. 29, 1874	73 77
	196	" " "	68 78
	197	" " "	81 24
	198	" " "	83 73
	268	" " "	69 46
	269	" " "	69 46
	388	Dec. 29, 1874	74 32
	389	" " "	43 38

Schedule B—Continued.

Register.	No.	Date.	Amount.
	560	Oct. 6, 1874	134 82
	693	Sept. 29, 1874	57 53
	862	Oct. 6, 1874	14 47
	923	" " "	11 86
	1062	" " "	7 16
	1358	" " "	13 84
			1,237 31
55			1,237 31
Liber K	1359	Oct. 6, 1874	20 72
	1394	" " "	3 86
	21	Sept. 29, 1874	32 36
	34	" " "	37 77
	44	" " "	37 77
	423	" " "	24 41
	799	" " "	42 77
	1356	Oct. 6, 1874	13 84
Liber L	95	Dec. 8, 1874	136 54
	310	" " "	45 69
	319	" " "	45 69
	514	" " "	21 32
	1051	Dec. 22, 1874	122 77
	1069	" " "	118 31
	1079	" " "	118 32
	1113	" " "	143 43
	1133	" " "	82 89
	1179	" " "	75 65
	1185	" " "	92 02
	1222	" " "	38 38
	1239	" " "	161 81
	1240	" " "	161 81
	1247	" " "	83 96
	1249	" " "	10 70
	1262	" " "	172 25
	1268	" " "	39 46
	2317	Jan. 19, 1875	151 69
	2454	" " "	13 05
	2485	" " "	93 71
	2500	" " "	67 90
	2504	" " "	100 07
	2514	" " "	62 94
			3,611 17

GEO. S. WHEELER.

JAMES STIKEMAN, *Pl'ff's Att'y.*

56 *Preliminary Injunction.*

Supreme Court, County of Kings.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

It appearing to my satisfaction from the verified complaint in this action that the defendant is about to cancel in his office the sales mentioned in the complaint in violation of the plaintiff's rights, and that the plaintiff will sustain irreparable injury thereby, and plaintiff having given the undertaking required by law:

Now, on motion of James Stikeman, attorney for the plaintiff—

It is ordered that the defendant, his deputy, clerks, and assistants, be, and they are hereby, enjoined and restrained from cancelling the sales mentioned in the complaint until the further order of the court.

And it is further ordered that the defendant show cause at a special term of this court, to be held at the court-house, in the city of Brooklyn, on the 12th day of December, 1885, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the foregoing injunction should not be continued until the final judgment in this action, and why the plaintiff should not have such other relief as to the court may seem proper.

Dated December 5th, 1885.

EDGAR M. CULLEN, *J. S. C.*

57 At a special term of the supreme court, held at the court-house, in the city of Brooklyn, on the 25th day of February, 1886.

Present: Hon. Edgar M. Cullen, justice.

Order Denying Motion for Injunction.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

On the complaint in this action, verified by the plaintiff on the 5th day of December, 1885, and the injunction granted in this action on the same date, and the order to show cause why said injunction should not be continued until the final judgment in this action, and why the plaintiff should not have such other relief as to the court may seem proper, after hearing James Stikeman, Esq., on behalf of the plaintiff, and John A. Taylor, Esq., on behalf of the defendant, and on motion of Almet F. Jenks, attorney for the defendant—

It is ordered that the motion to continue the injunction granted in this action on the 5th day of December, 1885, enjoining and restraining the defendant, his deputy, clerks and assistants, from

cancelling the sales mentioned in the complaint herein be, and the same hereby is, denied, and—

It is further ordered that said injunction be, and the same hereby is, in all respects vacated and set aside with ten dollars costs to the defendant.

(Endorsed: Filed April 10, 1886.)

58 *Demurrer.*

Supreme Court, Kings County.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears.

The defendant hereby demurs to the complaint of the plaintiff in this action on the ground that it appears on the face thereof that said complaint does not state facts sufficient to constitute a cause of action.

ALMET F. JENKS,
Attorney for Defendant.

At a special term of the supreme court, held at the court-house, in the city of Brooklyn, on the 20th day of April, 1886.

Present: Hon. Edgar M. Cullen, justice.

Order Sustaining Demurrer.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears.

The demurrer in this action coming on for argument, and
59 after hearing Almet F. Jenks, Esq., in support of said demurrer, and James Stikeman, Esq., in opposition thereto:

Now, on motion of Almet F. Jenks, attorney for the defendant—

It is ordered that said demurrer be, and the same hereby is, sustained, and that defendant have judgment thereon with costs.

Judgment, April 21, 1886.

Supreme Court, Kings County.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears.

The demurrer in this action having been argued, and a decision having been rendered sustaining said demurrer and ordering judgment thereon for the defendant with costs, and an order having been entered to that effect, and costs having been taxed at the sum of $55.75:

Now, on motion of Almet F. Jenks, attorney for the defendant—

It is adjudged that the complaint herein be, and the same is hereby, dismissed, and that the defendant recover of the plaintiff the sum of $55.75, costs of this action.

JOHN M. RANKEN, *Clerk.*

60 *Notice of Appeal to the General Term.*

Supreme Court.

GEORGE S. WHEELER, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Please to take notice that the plaintiff hereby appeals to the general term of this court from the judgment entered in this action in the office of the clerk of the county of Kings on the 21st day of April, 1886, dismissing the complaint with costs, and also from the order entered in said clerk's office on the 10th day of April, 1886, denying the plaintiff's motion for an injunction.

Dated April 22d, 1886.

Yours, &c.,
JAMES STIKEMAN,
Appellant's Attorney, 18 *Broadway, New York City.*

To Almet F. Jenks, Esq., attorney for respondent; John M. Ranken, Esq., clerk.

61 *Opinion by Cullen, J.*

Supreme Court.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, Registrar, etc.

Under the provisions of the charter the purchaser at a tax sale is entitled to a lease of the premises sold after the expiration of two years, unless the sale has been redeemed by the owner. The purchaser obtains for his purchase-money the right to possession of the land for the term for which it was sold. The statute, the validity of which is assailed, directs that after the expiration of six months from the date of the act, as to sales made more than eight years previous, no lease shall be given, and the sales shall be canceled by the registrar of arrears. The effect of this act is to compel the tax-buyer to take out a lease, or bring an action to foreclose the sale within six months or, in default thereof, to forfeit his purchase. No question is made that the time allowed by the act is not reasonable, but it is claimed that the right of the purchaser cannot be subjected to any limit not prescribed at the time of the sale to him. I think this claim untenable. It is settled by authority that the lien of a tax may be barred by the statute of limitations (Fisher *vs.* Mayor, etc., 67 N. Y., 73), and it seems conceded that a sale falls within the same rule (Jenkins *vs.* Fahey, 73 N. Y., 364). This court has held, in Orr *vs.* Remsen, that tax and assessment sales more than twenty years old, upon which no lease had been executed, did not constitute valid objections to a title offered a purchaser at a judicial sale.

62 If the claims of the tax-buyers are subject to any statute of limitations, it is undoubtedly within the power of the Legislature to shorten the time prescribed by the statute so long as a reasonable time is left after such alteration in which the claim may

be enforced (Morse *vs.* Goold, 11 N. Y., 288; Hawkins *vs.* Barney, 5 Peters, 466; Cooley Constitutional Limitations, p. 357).

As before stated, the right acquired by the tax-buyer was the right to possession of the land. This right was vested and doubtless could not be invaded by legislation; but the Legislature might act on the remedy and prescribe any formalities to be observed by the buyer, and for a failure to comply with such formalities direct the forfeiture of the rights acquired, always provided that the substance of the contract was not affected. In this case the buyers had a right to a lease. That right is not taken away, but it is provided that the lease must be taken in six months, otherwise that the right be lost. In Butler *vs.* Palmer, 1 Hill, 324, mortgaged premises had been sold under foreclosure during the existence of a statute giving the mortgagor or his assignee the right to redeem at any time within one year from the sale. Subsequently the statute was repealed, the repeal to take effect on November 1st following, less than a year after the sale mentioned. It was held that the statute affected prior sales, and that the defendant's right to redeem was lost after November 1, 1838. I think the principle in this case is not to be distinguished from the one decided in the case cited. It follows that the act under consideration is valid, and that the motion for an injunction should be denied and the application for a mandamus granted, ten dollars costs to prevailing party in each case.

63 At a general term of the supreme court, held in and for the second judicial department, at the court-house, in the city of Poughkeepsie, on the 23d day of July, 1886—

Present: Hon. J. F. Barnard, P. J.; Hon. J. O. Dykman, Hon. Edgar M. Cullen, justices.

Order of Affirmance.

GEORGE S. WHEELER
vs.
THEODORE F. JACKSON, Registrar.

The appeal from the judgment entered herein having been brought on for argument before this court—

Now, after hearing counsel for the respective parties, and due deliberation having been had thereon, it is ordered that the said judgment be, and the same hereby is, affirmed, with costs.

64 *Judgment of Affirmance.*

Supreme Court. General Term.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, Registrar of Arrears of the City of Brooklyn.

Judgment, December 10, 1886.

The appeal from the judgment entered herein having been argued, and a decision having been rendered affirming said judg-

ment, with costs, and an order having been entered to that effect, and the costs having been taxed at the sum of sixty-seven $\frac{25}{100}$ dollars, now, on motion of Almet F. Jenks, attorney for the defendant—

It is adjudged that the judgment appealed from in this action be, and the same hereby is, affirmed; and it is further adjudged that the defendant, Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, do recover of the plaintiff, George S. Wheeler the sum of sixty-seven $\frac{25}{100}$ dollars, the costs of this action.

JOHN M. RANKEN, *Clerk.*

65 *Notice of Appeal to the Court of Appeals.*

Supreme Court.

GEORGE S. WHEELER, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Please to take notice that the plaintiff hereby appeals to the court of appeals from the judgment of the general term of the supreme court, entered in the office of the clerk of the county of Kings on the tenth day of December, 1886, affirming the judgment of the special term in the above-entitled action with costs.

Dated December 11th, 1886.

Yours, &c., JAMES STIKEMAN,
Attorney for Appellant, 18 *Broadway, New York City.*

To Albert F. Jenks, Esq., attorney for respondent; John M. Rankem, Esq., clerk.

STATE OF NEW YORK, } ss:
County of Kings, }

66 I, John M. Ranken, clerk of the county of Kings and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original judgment roll and notice of appeal filed in my office, and that the same are true transcripts thereof and of the whole of such originals.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 17th day of December, 1886.

JOHN M. RANKEN, *Clerk.*

Opinion of General Term.

Supreme Court. General Term.

GEORGE S. WHEELER, Appellant,
against
THEODORE F. JACKSON, as Registrar, &c., Respondent.

James Stikeman for appellant, Almet F. Jenks for respondent.

DYKMAN, *J.:*

It is the object of this action to procure a perpetual injunction

against the defendant, who is the registrar of arrears of the city of Brooklyn, which shall restrain and prevent the cancellation
67 of certain sales for taxes, and also the records of such sales in his office. The plaintiffs in these actions became purchasers at various sales of real property for unpaid taxes and assessments, and received certificates of such sales, bearing dates from March 17, 1868, to May 22, 1877, inclusive. By the terms of these certificates the holders were entitled to a lease of the lots designated therein, after the expiration of two years from their respective dates, unless they were redeemed, and if any irregularity was discovered they could recover the money paid, without interest. Such were the rights and such the relative situation of these parties down to the 6th day of June, 1885, when an act was passed by the Legislature of the State amending the charter of the city in many respects enumerated therein. The portion brought into view by this action is section 15, in these words:

"None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed: Provided, however, That no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act, and notice thereof filed in the office of the registrar of arrears, but this provision shall not operate to extend any statute of limitation now applicable in such cases; and after the expiration of six months from the passage of this act it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no leases have been given, and every action commenced and
68 notice thereof filed within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

It is the claim of these plaintiffs that the second clause of this section of the law annuls their contracts, and is therefore void, because it is interdicted by that portion of the Constitution which interdicts the passage of laws impairing the obligation of contracts.

If the fact assumed in this proposition was established the result claimed would necessarily follow; but the difficulty encountered by the plaintiffs is that the assumption cannot be maintained. The section of the law construed together does not operate on the rights of the plaintiffs, except to preserve them. It imposes on the registrar of arrears a duty to cancel in his office all such sales made more than eight years prior to the passage of the law, where no leases have been given six months after the passage of the act. This is a short statute of limitation, affording the plaintiffs six months from its passage on which to exercise their rights to demand their leases.

After the expiration of that period their rights were barred and

their sales were required to be cancelled. The statute left a substantial remedy remaining in the hands of the plaintiffs, and therefore the obligation of their contract was not impaired. Within the meaning and prohibition of the fundamental law, that r
tends to the impairment and [illegible] of the duty of p
of the contract and not to a modification of the remedy
dom of the Legislature.

The limitations prescribed by positive law constitute
contract, and legislation which merely alters or limit
but yet [illegible] an existing remedy in substance in t
course of justice is not violative of the organic law.

Cooley's Constitutional Limitations, 358.

69 Before the passage of the law under consideration the claims of a tax purchaser might be barred by lapse of time, and all that this effects is the curtailment of that period.

Our views coincide with the opinion of Mr. Justice Cullen, delivered at the special term, and the judgment there rendered should be affirmed with costs.

Barnard, P. J., concurs.

70 *Remittitur. May 13th*, 1887.

STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 13th day of May, in the year of our Lord one thousand eight hundred and eighty-seven, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

E. O. PERRIN, *Clerk.*

71 *Judgment of the Court of Appeals.*

GEORGE S. WHEELER, Appellant,
ag'st
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Be it remembered that on the 18th day of December, in the year of our Lord one thousand eight hundred and eighty-six, George S. Wheeler, the appellant in this action, came here into the court of appeals, by James Stikeman, his attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York; and Theodore F. Jackson, registrar, &c., the respondent in said action, afterwards appeared in said court of Appeals, by Almet F. Jenks, his attorney.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. John J. Townsend, of counsel for the appellant, and by Mr. Almet F. Jenks, of counsel for the respondent, and after due

against the defendant, who is the registrar of arrears of the city of Brooklyn, which shall restrain and prevent the cancellation
67 of certain sales for taxes, and also the records of such sales in his office. The plaintiffs in these actions became purchasers at various sales of real property for unpaid taxes and assessments, and received certificates of such sales, bearing dates from March 17, 1868, to May 22, 1877, inclusive. By the terms of these certificates the holders were entitled to a lease of the lots designated therein, after the expiration of two years from their respective dates, unless they were redeemed, and if any irregularity was discovered they could recover the money paid, without interest. Such were the rights and such the relative situation of these parties down to the 6th day of June, 1885, when an act was passed by the Legislature of the State amending the charter of the city in many respects enumerated therein. The portion brought into view by this action is section 15, in these words:

"None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed: Provided, however, That no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act, and notice thereof filed in the office of the registrar of arrears, but this provision shall not operate to extend any statute of limitation now applicable in such cases; and after the expiration of six months from the passage of this act it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no leases have been given, and every action commenced and
68 notice thereof filed within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

It is the claim of these plaintiffs that the second clause of this section of the law annuls their contracts, and is therefore void, because it is interdicted by that portion of the Constitution which interdicts the passage of laws impairing the obligation of contracts.

If the fact assumed in this proposition was established the result claimed would necessarily follow; but the difficulty encountered by the plaintiffs is that the assumption cannot be maintained. The section of the law construed together does not operate on the rights of the plaintiffs, except to preserve them. It imposes on the registrar of arrears a duty to cancel in his office all such sales made more than eight years prior to the passage of the law, where no leases have been given six months after the passage of the act. This is a short statute of limitation, affording the plaintiffs six months from its passage on which to exercise their rights to demand their leases.

After the expiration of that period their rights were barred and

their sales were required to be cancelled. The statute left a substantial remedy remaining in the hands of the plaintiffs, and therefore the obligation of their contract was not impaired. Within the meaning and prohibition of the fundamental law, that restraint extends to the impairment and ~~suspension~~ of the duty of performance of the contract and not to a modification of the remedy is the wisdom of the Legislature.

The limitations prescribed by positive law constitute no part of a contract, and legislation which merely alters or limits a remedy, but yet ~~presumes~~ an existing remedy in substance in the ordinary course of justice is not violative of the organic law.

Cooley's Constitutional Limitations, 358.

69 Before the passage of the law under consideration the claims of a tax purchaser might be barred by lapse of time, and all that this effects is the curtailment of that period.

Our views coincide with the opinion of Mr. Justice Cullen, delivered at the special term, and the judgment there rendered should be affirmed with costs.

Barnard, P. J., concurs.

70 *Remittitur. May 13th*, 1887.

STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 13th day of May, in the year of our Lord one thousand eight hundred and eighty-seven, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

E. O. PERRIN, *Clerk.*

71 *Judgment of the Court of Appeals.*

GEORGE S. WHEELER, Appellant,
ag'st
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Be it remembered that on the 18th day of December, in the year of our Lord one thousand eight hundred and eighty-six, George S. Wheeler, the appellant in this action, came here into the court of appeals, by James Stikeman, his attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York; and Theodore F. Jackson, registrar, &c., the respondent in said action, afterwards appeared in said court of Appeals, by Almet F. Jenks, his attorney.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. John J. Townsend, of counsel for the appellant, and by Mr. Almet F. Jenks, of counsel for the respondent, and after due

deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed.

And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

72 And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,

Dep'y Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *May 13th*, 1887.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND,
Deputy Clerk.

Endorsed: "Filed May 21, 1887."

73 At a special term of the supreme court, held at the court-house, in the county of Kings, on the 21st day of May, 1887.

Present: Hon. Willard Bartlett, justice.

Order on Remittitur.

GEORGE S. WHEELER
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

On reading and filing the remittitur of the court of appeals to this court in this action, affirming the judgment appealed from with costs, and on motion of Almet F. Jenks, attorney for the defendant—

It is ordered that the judgment of the court of appeals in this action be, and the same hereby is, made the judgment of this court.

74 [Endorsed:] Supreme court. George S. Wheeler against Theodore F. Jackson, as registrar, etc. Order on remittitur. Almet F. Jenks, def't's attorney, city hall, Brooklyn. Filed May 21st, 1887.

75 At a court of appeals of the State of New York, held at the village of Saratoga Springs, on the 20th day of June, A. D. 1887—

Present: Hon. William C. Ruger, chief judge, presiding.

Certificate of the Decision of a Federal Question.

GEORGE S. WHEELER, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

It is hereby certified and stated by the court that in the record and proceedings herein was drawn in question the validity of a statute of the State of New York, to wit, the fifteenth section of an act entitled "An act to amend chapter 863 of the laws of 1873, entled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof,' passed June 6, 1885 and known as chapter 405 of the laws of 1885," on the ground of its being repugnant to the first article of the tenth section of the Constitu-
76 tion of the United States, as impairing the obligation of contracts, and on the ground of its being repugnant to the fifth article of the amendments to the Constitution of the United States, as depriving the appellant of property without due process of law, and the decision of this court is in favor of the validity of the said statute.

This certificate is made upon the prayer of the appellant, with a request to the supreme court that it be attached to the record, remitted to and on file in the supreme court.

[SEAL.] WM. C. RUGER,
Ch. J., C't of Appeals.

Witness:
E. O. PERRIN, *Clerk.*

STATE OF NEW YORK, *County of Kings,* } ss:

I, John M. Ranken, clerk of the county of Kings and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original certificate of the court of appeals of the State of New York, filed in my office June 28, 1887, and that the same is a true transcript thereof and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 28 day of June, 1887.

[Seal Kings County.]

JOHN M. RANKEN, *Clerk.*

77 [Endorsed:] Court of appeals. George S. Wheeler against Theodore F. Jackson, as registrar, etc. Certificate of decision of a Federal question. James Stikeman, attorney for plaintiff, 18 Broadway, New York.

78 *Bond.*

In the Supreme Court of the United States of America.

GEORGE S. WHEELER, Plaintiff in Error,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Defendant in Error.

Know all men by these presents that we, George S. Wheeler and William M. Macfarlane, of the city of Brooklyn, county of Kings, and State of New York, are held and firmly bound unto the above-named Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, his successors and assigns, in the sum of five hundred dollars, to be paid to the said Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, his successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of June, one thousand eight hundred and eighty-seven.

Whereas the above-named George S. Wheeler has prosecuted to the Supreme Court of the United States a certain writ
79 of error to reverse the judgment rendered by the judges of the court of appeals of the State of New York against the said plaintiff in error in favor of the said defendant in error:

Now, therefore, the condition of this obligation is such that if the above-named George S. Wheeler shall prosecute the said writ of error to effect, and, if he fail to make his plea good, answer all costs which, upon an affirmance of said judgment or upon a dismissal of said writ of error, may be adjudged or decreed to the said Theodore F. Jackson, then this obligation shall be void; otherwise, the same shall remain in full force and virtue.

GEO. S. WHEELER. [L. S.]
W. M. MACFARLANE. [L. S.]

Sealed and delivered in the presence of—
H. RODMAN HAGNER.

STATE OF NEW YORK, } ss:
County of Kings, }

On the 29th day of June, 1887, before me personally came George S. Wheeler and William M. Macfarlane, both known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

[NOTARIAL SEAL.] H. RODMAN HAGNER,
Notary Public for Kings Co.

80 STATE OF NEW YORK, } ss:
County of Kings, }

George S. Wheeler and William M. Macfarlane, being duly sworn, say, each for himself, that he is a resident of the city of Brooklyn

and a freeholder in the State of New York, and that he is worth the sum of one thousand dollars over and above all his debts and liabilities and exclusive of property exempt from execution.

GEO S. WHEELER.
W. M. MACFARLANE.

Sworn to before me this 29th day of June, 1887.

[NOTARIAL SEAL.] H. RODMAN HAGNER,
Notary Public for Kings Co.

The foregoing bond is approved.

SAM'L BLATCHFORD, *A. J. S. C.*

To Theodore F. Jackson, above named:

Please take notice that the bond of which the foregoing is a copy was this day duly filed in the office of the clerk of the county of Kings, in the State of New York.

Dated July 8th, 1887.

Yours, etc., JOHN J. TOWNSEND,
Att'y for Pl'ff in Error.

81 [Endorsed:] Supreme Court of the United States. George S. Wheeler plaintiff in error, against Theodore F. Jackson, as registrar, etc. Copy bond. John J. Townsend, attorney.

Endorsed on cover: New York supreme court. No. 980. George S. Wheeler, plaintiff in error, *vs.* Theodore F. Jackson. as registrar of arrears of the city of Brooklyn. Filed July 23, 1887.

Office Supreme Court U. S.
FILED.
NOV 10 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890

No. 65.

GEORGE S. WHEELER, PLAINTIFF IN ERROR,

against

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

JOHN J. TOWNSEND,
Counsel for Plaintiff in Error.

Evening Post Job Print, New York.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 65.

GEORGE S. WHEELER, PLAINTIFF IN ERROR,

against

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Brief of George S. Wheeler, Plaintiff in Error.

Statement of Facts.

This is an action brought by the plaintiff to restrain the defendant, the Registrar of Arrears, from canceling in his office a number of sales of land for taxes, in obedience to the fifteenth section of Chapter 405 of the Laws of the State of New York of 1885.

The complaint (fols. 11–13) alleges that at divers times the plaintiff, at public auction held by the Collector of Taxes and Assessments of the City of Brooklyn for the sale of property for unpaid taxes, &c., and by the Registrar of the Water Department for unpaid water rates, pursuant to Chapter 384 of N. Y. Laws of 1854, and the acts amendatory thereof, became the purchaser of the several lots of land described in Schedule A, attached to the complaint, which were sold for unpaid taxes and assessments, each for a term of years, and that he paid for each

lot the sum set opposite to its number in said Schedule A, and received from the said collector a certificate of sale of each lot bearing the date specified in Schedule A, each certificate declaring him entitled to a lease of the lot therein mentioned for a stated term of years after the expiration of two years from the date of the certificate, unless the lot should be redeemed within that time.

That at divers times the plaintiff at public auction held by the Registrar of Arrears of the City of Brooklyn for the sale of property for unpaid taxes, assessments and water rates, pursuant to Chapter 863, N. Y. Laws of 1873, and the acts amendatory thereof, became the purchaser of the several lots of land described in Schedule B, attached to the complaint, which were sold for unpaid taxes and assessments, each for a term ~~of~~ of years, and that he paid for each lot the sum set opposite to its number in the said Schedule B, and received from the Registrar a certificate of sale of each lot, bearing the date specified in Schedule B, each certificate declaring him entitled to a lease of the lot therein mentioned for a stated term of years after the expiration of two years from the date of the certificate, unless the lot should be redeemed within that time.

That all the certificates of sale so received are recorded in the office of the defendant; that none of the lots so sold have been redeemed, and that the plaintiff is still the lawful owner and holder of said certificates.

That on the 6th day of June, 1885, the Legislature of the State of New York passed an act entitled "An Act to amend Chapter 863 of the Laws of 1873, entitled 'An Act to amend the charter of the City of Brooklyn and the various amendments thereof,'" the fifteenth section of which Act of 1885 provided thus:

"§ 15. None of the provisions of this act hereinbefore con-
"tained, shall affect any sale for taxes, assessments or water
"rates heretofore made in said city, or the right of the parties
"or the proceedings thereunder, but ~~but~~ the same shall remain
"the same as though this act had not been passed; provided,
"however, that no action or special proceeding shall hereafter
"be brought or maintained against the City of Brooklyn, or the
"Registrar of Arrears of said city, to compel the execution or
"delivery of a lease upon any sale for taxes, assessments or
"water rates made more than eight years prior to the passage
"of this act, unless such action or special proceeding is com-
"menced within six months after the passage of this act, and

"notice thereof filed in the office of the Registrar of Arrears,
"but this provision shall not operate to extend any statute or
"limitations now applicable in such cases. And, after the ex-
"piration of six months from the passage of this act, it shall be
"the duty of the Registrar of Arrears, to cancel in his office, all
"such sales made more than eight years prior to the passage of
"this act, upon which no leases shall have been given, and no
"action commenced, and notice thereof filed as aforesaid,
"within the period hereinbefore limited therefor, and thereupon
"the lien of all such certificates of sale shall cease and de-
"termine."

That the said section is unconstitutional and void.

That if the sales mentioned be canceled in the defendant's office, all public notice of the plaintiff's rights and liens in the premises will be wholly destroyed, and the plaintiff will sustain irreparable injury and damage.

That the defendant, nevertheless, threatens to cancel the said sales in his office regardless of the rights of the plaintiff.

The prayer for relief asks that the defendant be perpetually enjoined from canceling such sales or the record thereof in his office.

To this complaint the defendant demurred on the ground that the complaint on the face thereof did not state facts sufficient to constitute a cause of action (fol. 58).

The Supreme Court at Special Term sustained the demurrer and gave judgment thereon in favor of the defendant (fol. 59).

This judgment was affirmed by the General Term of the Supreme Court (fol. 59), which judgment was also affirmed in the Court of Appeals (fol. 71).

To review in this Court the judgment of the Supreme Court of the State of New York, so affirmed by the Court of Appeals, the plaintiff in error sued out the present writ of error (fol. 2).

The opinion at the Special Term of the Supreme Court will be found at folio 61, and that at the General Term will be found at folio 66. No opinion was filed by the Court of Appeals. (105 N. Y., 681.)

Assignment of Error.

The sole error assigned is the ruling of the Supreme Court and the Court of Appeals of the State of New York, sustaining the constitutionality of Section 15 of Chapter 405, New York Laws of 1885.

The validity of that portion of that act is drawn in question

in the record and in the proceedings in this action on the ground of its being repugnant to the first article, tenth section, of the Constitution of the United States as impairing the obligations of contracts, and on the ground of its being repugnant to the fifth article of the amendments to the Constitution of the United States as depriving the appellant of property without due process of law. See the certificate of the Court of Appeals to that effect (fol. 75).

To sustain the unconstitutionality of this section of the statute, the following points are relied on:

Point I.

The plaintiff's rights under the tax sale constitute a contract.

The material portions of the statute under which the plaintiff's rights arise, are these:

The charter of 1854, Chapter 384, Laws of 1854; Title V. provides:

§ 26. If any such tax or assessment remain unpaid on the day specified in said notice, the collector shall proceed to sell by public auction, at the City Hall of said city, the property on which said tax or assessment shall have been imposed, for the lowest term of years, for which any person will take the same and pay the amount of such tax or assessment, with the interest and expenses, and he shall continue the sale from time to time until all such lands shall be sold. He shall thereupon deliver to the purchaser a certificate of such sale, and note the same on the original tax or assessment rolls, and on the abstracts hereinbefore directed to be kept in his office; such certificate of sale shall be recorded in the collector's office, in proper books kept for that purpose, and shall constitute a lien upon the lands and premises therein described, after the same shall have been so recorded; and no assignment of any certificate given on the sale of lands for any taxes or assessment shall have any effect until notice of the same, with the name and residence of the assignee, shall be

filed in the office of the Collector of Taxes and Assessments of the district in which such lands are situated.

§ 29. The owner, mortgagee, occupant, or any other person interested in such lands may, at any time within two years after the sale for either tax or assessment, redeem the said lands by paying to the Collector of Taxes and Assessments, in the district in which said lands are situated, for the use of said purchaser, the said purchase money, together with any other tax or assessment which the said purchaser may have paid, chargeable on said land, and which he is hereby authorized to do, provided a notice thereof has been filed in the office of such collector, with fifteen per cent. per annum in addition thereto, and the certificate of such collector, stating the payment and showing what land such payment is intended to redeem, shall be evidence of such redemption. The mortgagee shall have power to redeem at any time until after the six months specified in the twenty-seventh section of this title.

§ 30. Upon receipt of such moneys by such collector, he shall cause the same to be refunded to the purchaser, his legal representatives or assigns, and all proceedings in relation to said sale shall cease; but if said moneys shall not be paid according to the exigency of said notice, such collector shall proceed to execute a conveyance of the property so sold, as hereinafter provided.

§ 33. The collector of the district where the land sold for any tax or assessment shall not have been redeemed as by this act provided, shall execute to the purchaser or his assigns, pursuant to the terms of sale, a proper conveyance of the lands so sold by him, which shall contain a brief statement of the proceedings had for the sale of said lands, and shall be evidence that such sale and other proceedings were regularly made and had according to the provisions of this act. He shall also forthwith note the same on the assessment rolls and abstract kept in his office. The grantee shall be entitled, as against all persons whomsoever, to the possession of said premises, and to the rents, issues and profits thereof pursuant to the terms of his conveyance, and shall be entitled to obtain possession of his lands by summary proceedings, in the same manner as is provided by law for the removal of persons who hold over or continue in possession of real estate sold by virtue of an execution against them.

§ 34. No provision of law requiring the name of the owner of premises assessed, or proposed to be assessed, to be mentioned, or requiring the names of resident or non-resident owners to be kept separate, shall apply either to proceedings for laying or levying the general taxes or local assessments in said city, or the tax or assessment rolls. (Added by Chap. 635 of 1868, Sec. 3.)

The foregoing provisions of the charter of 1854 are substantially re-enacted in the charter of 1873. See Chapter 863, Laws of 1873, Title VIII., §§ 5, 8, 10. The Registrar of Arrears being substituted in place of the Collector of Taxes and Assessments.

Under these statutes the city, being the owner of an uncollected tax or assessment, invites the plaintiff to advance the amount of the tax or assessment with interest and expenses.

The money paid in by the tax sale purchaser does not pay the tax; the tax remains as the foundation of his title.

Clementi *v.* Jackson, 92 N. Y., 591.

The purchaser under these statutes in consideration of advancing the amount of the unpaid tax, interest and expenses becomes possessed of two rights defined in the statute: the right to have a lease for a stated term of years, and an action at law of ejectment or summary proceedings to obtain possession of the land; the further right to bide his time, not to take out a lease and engage in a litigation to secure the land itself, but as the easier course to wait and to rely on securing through the operation of the record of the sale in the office of the Registrar the very profitable return on his money provided by the percentage of fifteen per cont., which along with the amount of the purchase money the owner of the land is by the statute compelled to pay on redeeming the property in order to clear his title.

This latter is the right usually availed of by the tax sale purchaser. It is of no prejudice to the city, because the city has already received the advance of the amount of the tax, and in the absence of a lease can be drawn into no possible complication after the sale. It is useful to the owner of the land, because it keeps open for him the valuable privilege of redemption.

The two rights, that of taking out a lease and enforcing it, and that of awaiting redemption by the owner of the land, are separate and distinct rights, belonging to and vested in the tax sale purchaser.

These two rights are recognized by this Court in Curtis *v.* Whitney, 13 Wall., 68.

These rights acquired by a purchaser at a tax sale amount to, and are a contract within the meaning of the clause of the Constitution.

Corbin *v.* Comrs. of Washington Co., 3 Fed. Reporter, 356; 1 McCrary, 521, and cases cited under Point II.

Point II.

The operation of the statute, Section 15, Chapter 405 of the Laws of 1885 impairs the validity of the purchaser's contract, and is therefore unconstitutional.

The earlier sections of this statute amended the existing law regulating the sale of land for taxes. The material and concluding section of the act reads thus:

CHAPTER 405.

AN ACT to amend Chapter 863 of the Laws of 1873, entitled "An Act to amend the charter of the City of Brooklyn and the various amendments thereof."

Passed June 6, 1885, three-fifths being present.

§ 15. None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed; provided, however, that no action or special proceeding shall hereafter be brought or maintained against the City of Brooklyn, or the Registrar of Arrears of said city, to compel the execution or delivery of a lease upon any sale for taxes, assessments or water rates made more than eight years prior to the passage of this act, unless such action or special proceeding is commenced within six months after the passage of this act, and notice thereof filed in the office of Registrar of Arrears, but this provision shall not operate to extend any statute of limita-

tions now applicable in such cases. *And after the expiration of six months from the passage of this act it shall be the duty of the Registrar of Arrears, to cancel in his office, all such sales made more than eight years prior to the passage of this act, upon which no lease shall have been given, and no action commenced, and notice thereof filed, as aforesaid, within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine.*

That portion of the section following the proviso divides itself into two clauses, the first beginning with the word "provided," and the second beginning with the words, "And after the expiration of six months."

These two clauses relate respectively to the two rights specified in Point I. as being acquired by the tax sale purchaser under the statutes regulating the sale. It is with the second clause, printed in italics, that this appeal is more particularly concerned.

The first clause of the section purports on its face to prescribe a short limitation of action against the city to compel the execution or delivery of a lease.

So far as the first clause may be taken merely to prescribe a short statute of limitations for actions brought against the city to compel the execution and delivery of a lease, it does not now affect the plaintiff in the present controversy. The plaintiff has demanded no lease and he has brought no such action against the city; it may never be necessary for him to bring such an action. *Non constat*, but the city is and always will be ready to execute and deliver a lease on demand, and will not, as in good morals it should not, avail itself of this limitation. The city has no interest in so doing, or in refusing a lease. Upon receipt of the purchase money at the tax sale, the city, in respect to the purchaser, became a trustee, in the same way as any private vendor who has received the purchase money and has not given a deed becomes a trustee (Story's Equity, § 1212). The city may not repudiate this trust. The interests of the city and the purchaser are not adverse; they are harmonious.

Under the statutes regulating the tax sale and which constitute the contract, the purchaser is under no obligation to

apply to the city for a lease; on the other hand, the obligation as such of the city under the contract to give a lease continues indefinitely.

An action to enforce this obligation may be barred by a statute of limitation, but the obligation itself cannot be impaired. The obligation remains, and the city cannot be prohibited from recognizing and complying with it at any time. No more could the Legislature, although it may prescribe a statute of limitation to an action upon a promissory note, prohibit the maker from recognizing the obligation represented by the note and discharging it at any time. A statute of limitation is confined to the remedy alone, it does not touch the contract.

"Statutes of limitations relate to the remedies which are " furnished in the courts. They rather establish that certain " circumstances shall amount to evidence that a contract has " been performed than dispense with its performance."

Sturges *v.* Crowninshield, 4 Wheaton, 207.

So far as the first clause ceases to be merely a statute of limitation of actions against the city to compel the execution and delivery of a lease, but is taken to be a legislative prohibition against the execution and delivery of a lease by the city under the contract of sale, at that point the clause ceases to be a statute regulating the remedy under the contract and becomes one impairing the obligation of the contract itself. This the Legislature cannot do, and in this respect the first clause is unconstitutional and void.

See Winter *v.* Jones, 10 Georgia, 190, 196, *et seq.* In this case an act of the Legislature of the State of Georgia, passed in 1827, authorizing the sale of certain State land, provided that the purchaser at the time of sale was to receive a certificate of sale which should entitle him to have a formal grant of the premises. The act did not limit the time within which he might apply for or receive a grant, leaving him at liberty to apply for a grant whenever he might wish to have his title evidenced. The Court held that the sale under the Act of 1827 constituted a contract which could not be enlarged or abridged, or saddled with conditions not expressed in the contract, and that accordingly a subsequent act of the Legislature, passed in 1847, limiting the time of taking out the grant until the first day of November next ensuing its passage, and imposing as a penalty for non-compliance the forfeiture of the land, was unconstitutional and a nullity.

See also Waltemire *v.* Westover, 14 N. Y., 16, where it was held that although by the Revised Statutes an action upon a justice's judgment was barred after six years, yet the lien of the judgment itself continued on for its full term, notwithstanding this statute of limitation.

In White *v.* Brooklyn, the Court of Appeals of the State of New York, where the rights of the city and a purchaser at a tax sale were involved, has only recently decided (October 7, 1890) that although the right of action against the city for a specific performance of that clause of the certificate or contract of sale providing for the execution and delivery of a lease would be barred after the expiration of ten years, citing Bruce *v.* Tilson, 25 N. Y, 194, yet "the Statute of Limitations has relation to the remedy only, and while it might be made available to defeat the remedy, it would not affect or curtail the lien of a valid sale; that is supposed to continue for twenty years."

The second clause is the one with which we are here more particularly concerned.

The clause is not a statute of limitation in any sense, it is baldly a statute impairing the obligation of a contract, destroying the rights acquired by the plaintiff as purchaser at the tax sale. It operates to destroy the security upon which the purchaser relied when advancing his money at the sale; the security which formed part of the contract represented by that sale. That security is purely *in rem.* and depends on the lien of the record after sale.

See § 34 of the Statute (*ante*, p. 6); and Haight *v.* The Mayor, 99 N. Y., 280.

There is no escape from this conclusion. The purchaser will have lost his purchase money and the delinquent owner will have his land free from the plaintiff's claim. This was not the result contemplated at the time of the sale. The law in force at the time of the sale and defining the plaintiff's rights entered into and became a part of the contract. When the law at that time said that the sale should be recorded and should constitute a lien upon the land, this was the security held out to intending purchasers to induce them to advance their money. The Legislature cannot by subsequent legislation impair or destroy this security.

Remedies for the enforcement of rights may be regulated,

but the Legislature under the guise of regulating the remedy may not impair the obligation of the contract.

"By the obligation of a contract is meant the means which at the time of its creation the law affords for its enforcement."
Nelson *v.* St. Martin's Parish, 111 U. S., 716, 720.

This principle is illustrated in cases where the lien of a judgment is sought to be impaired by exemption laws.

In Gunn *v.* Barry, 15 Wall., 611, at page 622, it is said:

"If the remedy is a part of the obligation of the contract, a clearer case of impairment can hardly occur than is presented in the record before us. The effect of the act in question under the circumstances of this judgment does not merely impair, it annihilates the remedy. There is none left. But the act reaches still further, it withdraws the land from the lien of the judgment, and thus destroys a vested right of property which the creditor had acquired in the pursuit of the remedy to which he was entitled by the law as it stood when the judgment was recovered * * * This is contrary to reason and justice and to the fundamental principles of the social compact."

Also in Edwards *vs.* Kearzey, 96 U. S., 595, at p. 600:

"The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing. 1 Bac. Abr. Tit. Actions in General. Letter B. * * * It is also the settled doctrine of this Court, that the laws which subsist at the time and place of making a contract enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This rule embraces alike those which affect its validity, construction, discharge and enforcement. Von Hoffman *v.* Quincy, *supra* (4 Wall., 535); McCracken *v.* Hayward, 2 How., 508.

"In Greene *v.* Biddle (8 Wheat., 1), this Court said, touching the point here under consideration: 'It is no answer, that the

acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they overturned his rights and interests.'

'One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force' (*Planter's Bank* vs. *Sharp et al.*, 6 How., 301, at page 607)." And at p. 607.

"The remedy subsisting in a State when and where a contract is made and to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void."

The following are cases where the same principle is applied to tax sales:

Dikeman *v.* Dikeman, 11 Paige Ch. (N. Y.), 484.

This was an appeal by a tax sale purchaser from an order of the Court of Chancery under the provisions of an act of the Legislature, passed May 26, 1841, extending the time of the owner to redeem from tax sale. The Court in discussing the constitutionality of the Act of 1841 says:

"By the Act of April, 1816, for the more effectual collection of taxes and assessments in the City of New York (Laws of 1816, p. 113), where lands are sold for taxes or assessments, they are to be sold for a term of years to the person who will advance the amount due, including the interest and costs, for the shortest term. And the corporation is to give to the purchaser a certificate, describing the lands sold, and specifying the term of years for which the same have been sold, the sum paid therefor, and the time when the purchaser will be entitled to a lease of the lands thus sold. The statute then provides that if the owners of the land, or some one in their behalf, do not redeem such land within two years from the date of the certificate by paying the sum mentioned therein, with interest at the rate of twenty per cent. per annum, the corporation shall, at the expiration of the two years, give to the purchaser a lease for the term for which

the lands were sold. * * * These provisions of the act of April, 1816, remained in full force at the time of the appellant's purchase in October, 1840, except as to the rate of interest and the rights of mortgagees, and as to the payment of certain expenses subsequent to the sale (see Laws of 1840, p. 278; §§ 5, 6; *Id.*, p. 336). When Storms became the purchaser of the premises in question, therefore, if these assessments are valid and the sale regular, his contract with the corporation, under the sanction of a law of the State, entitled him to an absolute lease of the premises at the end of two years, and to the possession and use of the same for the full term mentioned in his certificate of sale; in case the owners of the land or some person for them should not redeem the same within the two years, as required by the laws then in force. The question then which arises under the Act of the 25th of May, 1841, is whether it was competent for the Legislature to extend the time for redemption, for six months at least, beyond the two years; and thus to deprive the purchaser of the possession and use of the premises for a part of the term which he had purchased therein, without any compensation whatever. * * *

"The case would have been entirely different if the appellant had become the purchaser of the lands in question and had advanced his money upon such purchase, after the passage of the law requiring personal notice to be served on the occupant, and giving six months thereafter to redeem; and after the passage of this law [that of 1841] authorizing the Court of Chancery to extend the time to redeem in certain cases. For then the legal presumption would have been that the purchaser intended to assume the burthen of serving a notice upon the occupant, and knew that the time of redemption would not expire until six months after the service of such notice; and that he also assumed the risk of the extension to redeem, in a case like the present, if the Court, in the exercise of a sound discretion, should grant such an extension. But as no such presumption can arise in a case where by the terms of the act under which the purchase was made, and upon the faith of which the purchaser advanced his money, such purchaser was entitled to an irredeemable term in the lands and to the immediate possession thereof as soon as he obtained his lease from the corporation at the end of the two years. * * * The language of the Act of the 26th of May, 1841 * * * is such in its terms as to embrace sales which had already been made as well as those which might be made thereafter. It therefore becomes the duty of this

Court to declare it inoperative and void as against the appellant, and in reference to the purchase which he had previously made."

Robinson *v.* Howe, 13 Wisc., 341, 343.

Where land has been sold for taxes under a law which provided that the owner might redeem within a specified time after the sale, it is not within the power of the Legislature by a subsequent act to extend the privilege of redemption for a longer period. To do so would impair the obligation of the contract The rights of the purchaser "are derived from the contract which the law authorized to be made." (p. 346.)

Bruce *v.* Schuyler, 4 Gilman (Ill.), 221, 274.

"Was it within the constitutional competence of the Legislature to abolish the power of the Auditor to make a deed after the passage of the Act of 1833, to land sold prior to that time under the Act of 1827, and thereby deprive a purchaser of a deed from that officer, or any other authority competent to make a valid one? The Constitution of the United States provides that no State shall pass any law impairing the obligation of a contract, &c. The State Constitution contains the same prohibition upon the power of the Legislature, with the difference of the word 'validity,' in place of that of 'obligation' used in the Constitution of the United States. Is the sale made by the Auditor of the land in question a contract within the meaning of the Constitution? That, I think, will be manifest by adverting to the law authorizing the sale, and the action under it. In order to collect its revenue, the State authorizes the Auditor to sell the land of delinquent taxpayers. That officer accordingly gives notice that he will sell all such lands at a time and place specified, and as an inducement to purchasers, the law provides that the Auditor shall give to the purchaser a certificate of purchase, or a deed, at the option of the purchaser, to the whole or such part of each tract of land as he may purchase and pay the tax due thereon. Upon these terms the land is sold, the stipulated price paid by the purchaser, and a deed therefor executed by the Auditor; but before the deed is made, the law authorizing this officer to sell and convey delinquent lands is said to be repealed, and the duty of making these sales is imposed upon other officers. The case thus stated embraces all the constituent parts of a contract so fully and clearly as to leave no doubt as to the character of the transaction. All argument therefore to

prove it a contract would be superfluous, and that it is such a one as is contemplated by the Constitution can, I think, be equally clear, and if so, it follows that the Legislature could not constitutionally destroy the authority of that officer to convey the land according to the terms of sale, by a repeal of the law requiring the performance of that duty. Such an act would impair the obligation of the contract, and would consequently be void.

"By a series of adjudications the constitutional provision referred to has been so construed as to protect the validity of contracts from all legislative encroachment in any and every form in which it may be assailed. Any act, therefore, which changes the expressed intention of the parties to a contract, or such as results from their stipulations, is held to impair its validity, and it is immaterial as to the extent or the manner of the change, whether it be ever so minute, or relates to its construction, its evidence, or the time or manner of its performance, the conclusion is the same. Every conceivable change of a contract impairs its validity, and renders it null and void." (Citing cases.) * * *

"It is insisted, however, by the counsel for the defendant, that the subsequent act of the Legislature, which repealed the fourth section of the act, which requires a conveyance to be made to the purchaser, is not in conflict with the Constitution, because it operates only upon the remedy of the purchaser, and not upon the obligation of the contract, and numerous authorities are referred to for the purpose of sustaining this position, but they totally fail to do so. The execution of a deed to the purchaser by the auditor, at the time and in the form prescribed by the law, is as much a part of the contract as any other portion of it. It is one of the stipulations contained in the law as an inducement to the purchase of the land, and from its importance as confirming and evidencing title, it cannot be doubted was in the contemplation of the purchaser at the time he made the contract.

See also:

State *v.* Commissioners, 4 Wisc., 414,

Where a purchaser of school lands under the Revised Statutes had the right upon forfeiture of his contract of purchase for the non-payment of the sum due upon it, to revive it at any time before public sale as provided in the statute, by the payment of all sums due upon the contract and a penalty of five per cent.,

Held, the purchaser could not by subsequent legislation be deprived of that right.

"There can be no doubt (p. 418) that these express provisions of the statute at the time the contract of sale between the purchaser and the State was made, entered into and became a part of such contract, and no subsequent law could be enacted which could change the conditions or impair the obligations imposed by them."

Robinson *v.* Magee, 9 California, 81.

An Act of the California Legislature, approved April 27, 1855, provided that all persons holding orders or warrants upon the Treasurer of Calaveras County, issued prior to the time of the organization of Amador County, should present the same to the Auditor of Calaveras County for registration on or before the first day of July, 1855, and in case any such person should fail to so present his claim he should be forever thereafter barred from enforcing the payment thereof, and the same should be deemed canceled.

"The first point made by the plaintiff is that the provision requiring pre-existing creditors of the county to register their warrants on pain of forfeiture of their claims is unconstitutional and void, because it impairs the obligation of contracts. The Constitution of the United States provides that 'no State shall pass any law impairing the obligation of contracts.' The same provision, in substance, is contained in the Constitution of this State."

After discussing the scope of this constitutional provision, the Court continues: "If, then, the intention of the Constitution was to secure greater practical results by the protection granted to individuals, this protection can only consist in attaining the only end contemplated by the contract itself. If that end be substantially defeated by the law, the operative force of the obligation of the contract is impaired. Any other than practical and efficient protection would be idle.

"A criminal statute without a penalty and a civil right without a remedy never can exist in the practical theory of government. It is not the intent of government to establish mere abstract and inoperative principles. A dormant right that cannot be enforced is no right at all. To say that, the law will give a party a judgment, and yet refuse him an execution to enforce it, is to give him the shadow and withhold the substance * * * The right and the remedy in the theory of all

practical and just governments must stand or fall together. To deny the right is necessarily to deny the remedy, and to admit the right and yet deny the remedy, is to impair the right and to render it either partially or wholly inoperative. * * *

"As the Constitution intended to prohibit the Legislature from defeating a certain end, it does not matter how or by what means or in what manner this end is sought to be defeated; the act is equally unconstitutional. If the purpose be defeated, the manner in which it is done is unimportant, and cannot change the substantial result. * * * If these views be correct, then whatever provision of a statute substantially defeats the end contemplated by the parties in making the contract must impair its obligation. And to ascertain the end contemplated by them, we must look to the law as it existed at the time when the contract was made. All men are presumed to know the law; and the law then existing enters into and forms a part of the contract without any express stipulation to that effect. Parties in entering into contracts only expressly stipulate as to matters that cannot appear without such stipulation. It would be idle for them to say expressly that they incorporate in their agreement the law then existing. As the law enters into the contract and forms a part of it, the obligation of such contract must depend upon the law existing at the time the contract was made. The contract being, then, complete and operative, the Legislature cannot, by a subsequent act, impair its obligation by requiring the performance of other conditions not required by the law of the contract itself. The rights as well as the intention of the parties are fixed and ascertained by the existing law; therefore, to require the performance of other conditions to make the contract operative is to impair its obligation. The power to impose conditions after the contract is all complete and perfect is nothing but the power to impair its obligation, and this the Constitution has prohibited. * * * For the reasons stated, I am constrained to consider that provision of the Act of April 27, 1855, declaring claims of pre-existing creditors forever barred if they failed to comply with the new conditions imposed, as impairing the obligation of contracts and therefore void."

Point III.

Opinions below at Special and General Term of the Supreme Court of the State of New York.

These opinions in varied phraseology falsely assume that the second clause of the 15th section only affects the plaintiff's remedy, and does not destroy his proprietary right. The falsity of this assumption it has been here attempted to expose.

The Legislature has directed the sale to be canceled, and the lien to be discharged, which direction annuls the rights acquired by the plaintiff, and affects the substance of his contract.

The Judge, at Special Term, cites but one authority which deserves notice.

The case is Butler *vs.* Palmer, 1 Hill, 324.

Ch. 410 of the Laws of 1837, p. 455, in cases of sales under mortgage, gave to the mortgagor, his personal representatives or assigns, a right to redeem within one year. A creditor recovered a judgment against the mortgagor. The mortgaged premises were sold under an execution to E. Corning, whose grantee attempted to redeem from a foreclosure sale of the mortgaged premises, but the statute giving the remedy was repealed before the expiration of the year limited for the time of redemption, and before the redemption was attempted to be made.

Per Curiam: "It is insisted that the Legislature had no right to interfere with Mr. Corning's right; that he having purchased (under the judgment creditor), and afterwards allowed the now plaintiff to bid in the premises at the Master's sale, under a prior mortgage, upon the statute which gave him a full year to redeem after the sale, an obligation arose to allow the whole time, which obligation could not impaired by State legislation. Had the repealing statute in terms taken away the remedy by redemption against his debtor's property, the objection might be well founded. But it did not. It still left him from the 11th of December, 1837, to the 1st of next November."

"This right of redemption was a matter of remedy: and admitting the repealing clause to operate against him, it would, therefore seem to come clearly with those cases which declare statutes of limitation to be without the meaning of the Constitution."

"The statute was no more in effect than saying: 'If you redeem within the shorter time prescribed, you shall have no action for a recovery of the land, nor shall your defense against an action be allowed, provided you get possession.' Were the question *res nova*, we might feel great difficulty in distinguishing between the obligation of contract and a remedy given by the law to enforce it. It is difficult, under the notion that obligation and remedy are essential to each other, to see how the latter can be impaired without producing the same consequence to the former. Yet the authorities are abundant, both in the United States Courts and our own, that a statute impairing the remedy is constitutional, especially when it operates merely by way of limitation in point of time."

The principle of the case of Butler *vs.* Palmer, is distinctly that the Legislature may act upon the *remedy*, but must not tamper with the *contract*.

The judgment creditor's right of redemption was distinctly considered, its nature and quality discussed. The Court arrived at the conclusion that a right of redemption is in essence a "remedy" and only a remedy, and upon that theory, adopted apparently with reluctance, decided that a right of redemption may be abridged by legislation.

The foregoing points are intended to show that in the case before the Court the Legislature has not touched a *remedy*, but has nullified the plaintiff's *contract*.

The learned Judge, at Special Term, has cited:

Fisher *vs.* Mayor, 67 N. Y., 73;
Jenkins *vs.* Fahey, 73 N. Y., 364;
Orr *vs.* Remsen,

to show that no one disputes, that a tax may be presumed to be satisfied, and that the claims of a tax purchaser may be barred by lapse of time.

What is denied, is the right of the State to abrogate the contract—to cancel the sale or interfere with the record which is necessary to the lien, and all of which entered into and formed part of the contract.

The second clause of the fifteenth section of Chapter 405 of 1885 is therefore void.

The converse of Butler *v.* Palmer, *supra*, has been decided:

Cargill *v.* Power, 1 Mich., 369.

Willis *v.* Jelineck, 27 Minn., 18.

And generally in respect to the decision of the Courts of the State of New York it is submitted:

"This Court construes all contracts brought before it for consideration, and in doing so its action is independent of that of the State Courts, which may have exercised their judgment upon the same subject. This is one of the functions we are called upon to perform in this case. The fact that one of the elements in the case is a statute of the State does [not?] affect the legal result. We are of the opinion that under the statutes of Iowa, in force, when the contract was made, the relator is entitled to the remedy he asks, and that this right can no more be taken away by subsequent judicial decisions than by subsequent legislation. It is as much within the sphere of our power and duties to protect the contract from the former as from the latter, and we are no more concluded by one than by the other."

Butz *v.* Muscatine, 8 Wall., 575, 584.

Point IV.

The second clause of Section 15 destroys and cuts off the tax sale purchaser's rights without a hearing or opportunity to defend or to plead any excuse and without compensation.

"It is a rule founded on the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights, and the constitutional provision that no person shall be deprived of these 'without due process of law,' has its foundation in this rule. This provision is the most important guaranty of personal rights to be found in the Federal or State Constitution. It is a limitation upon

arbitrary power and is a guaranty against arbitrary legislation. This the Legislature cannot do or authorize to be done."

Stuart *v.* Palmer, 74 N. Y., 183, p. 190.

If the Legislature limits an action upon a promissory note to six years, it cannot direct the note itself to be canceled or destroyed.

So the proprietary right in the record of the sale of which the plaintiff became the purchaser at the tax sale—whether enforceable or not, whatever its value, whether the cloud it creates is a detriment to the owner of the land or not,—cannot be destroyed by act of the Legislature without provision for compensation, and certainly not without provision for notice to those whose rights may be affected.

The plaintiff is entitled to the record of the sale for what it is worth.

Without due process of law persons cannot be deprived of the muniments which evidence or establish their rights.

State *vs.* Staten, 6 Coldwell (Tenn.), 233–243.

Point V.

The judgment of the Supreme Court and of the Court of Appeals of the State of New York should be reversed.

JOHN J. TOWNSEND,
Of Counsel.

NOV
JAMES H. McKEN
CLE

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 65.

GEORGE S. WHEELER, PLAINTIFF IN ERROR,

vs.

THEODORE F. JACKSON, REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN, DEFENDANT IN ERROR.

Opinion of the Court of Appeals of the State of New York in White vs. City of Brooklyn, Announced October 7, 1890.

JOHN J. TOWNSEND,
Counsel for Plaintiff in Error.

COURT OF APPEALS, SECOND DIVISION.

THOMAS WHITE and SAMUEL C. WHITE, Appellants,
vs.
THE CITY OF BROOKLYN, Respondent.
} Oct. 7th, 1890.

Appeal from judgment of the general term of the city court of Brooklyn affirming judgment entered upon decision of the special term dismissing the plaintiffs' complaint.

This action was brought upon the contracts of the defendant contained in several certificates of sales by its collector

of taxes and assessments of certain lands in the city of Brooklyn made in 1860, 1861, 1862, 1863, and 1864 for taxes assessed upon them from 1851 to 1862, inclusive. The certificates are held by the plaintiffs. They bear even dates with the sales respectively, are subscribed by such collector, and are in the form following: "I hereby certify that at public auction, held by me this day at the city hall, in the city of Brooklyn, for the sale of property for unpaid taxes, pursuant to an act entitled 'An act to consolidate the cities of Brooklyn and Williamsburgh and town of Bushwick into one municipal government, and to incorporate the same,' passed April 17, 1854, and the acts amendatory thereof, —— purchased the lot," &c., "assessed for the tax of —— for the term of —— years, for which he then paid the sum of —— dollars, and which said purchase entitles him to a lease of the said premises for the term aforesaid after the expiration of two years from the date hereof, unless said premises be redeemed within that time or any irregularity shall be discovered in the proceedings prior to said sale; in which case said purchase and all sums paid for taxes or assessments on said premises shall be repaid to said purchaser or his assigns, provided this certificate shall be surrendered to the collector of taxes and assessments, and no further or other damages shall be claimed by said purchaser." The plaintiffs held some of such certificates as purchasers, but the most of them as assignees of the purchasers mentioned in them. No redemption was made. In May and August, 1882, the plaintiffs demanded leases, which were not given, and in July, 1883, they demanded repayment to them of the purchase-money, which was refused. In December, 1882, it was discovered that there were irregularities in the proceedings prior to the sales by which the sales were rendered invalid. This action was commenced in July, 1883.

W. E. Osborn,
For Appellants.

William T. Gilbert,
For Respondent.

BRADLEY, *J.*:

When the two years from the times of the respective sales had expired, and the premises were not redeemed, the right of the purchasers or their assigns was to take conveyances for the terms of years mentioned in the certificates, unless some irregularity was discovered in the proceedings prior to the sales, and in that case to have the purchase-money refunded. This right was effectually given by the terms of the certificate (Brevort *vs.* City of Brooklyn, 89 N. Y., 128). It turned out that such irregularities did exist, and that as the consequence the sales in question were void. The purpose of this provision in the certificate for repayment evidently was for the benefit of the purchaser and for the restoration to him of the amount paid, if it appeared that the city was unable to give effect to the sale by the conveyance which it undertook to make. The discovery of the defect in the proceedings prior to the sale and not its existence merely was the fact which it was contemplated would deny to the defendant the right to make the conveyance and afford to the purchaser the right to reimbursement. If, therefore, without such discovery, the conveyance had been made to him the remedy of the purchaser to obtain repayment would have been defeated, although such irregularity prior to the sale had, in fact, existed (Coffin *vs.* City of Brooklyn, 116 N. Y., 159). The first condition upon which repayment was made to depend did not arise. The irregularity did exist and was discovered. The plaintiff's right to reimbursement was not defeated by any conveyance pursuant to the sale and certificate. The view of the court below was that the plaintiff's right to recover was barred by the statute of limitations, which seems to be the leading question here for consideration. If the right of the plaintiffs was dependent solely upon the fact that such irregularity existed, it is clear that the statute commenced running on the expiration of the time for redemp-

tion, and operated as a bar at the end of six years thereafter, although the plaintiffs were ignorant of the existence of the fact which entitled them to the remedy (Allen *vs.* Mills, 17 Wendell, 202). While a certificate of the character of those in question is in some sense similar to that of an executory contract of sale, the right to recover the purchase-money paid does not arise from any breach of the contract, but is in its enforcement. The case here therefore differs somewhat from the remedy given by refusal or inability of the vendor in the ordinary contract for the sale of land. There the remedy for recovery by way of reimbursement of the purchase-money is founded upon the breach of the contract. Here the contract gives the only right the plaintiffs have for that purpose. When the time for redemption expired the fact existed, which, if then discovered, would have entitled the purchasers or their assigns to repayment of the purchase-money. The discovery of the irregularity not then having been made, the defendant, in compliance with the certificate, could and probably would, if called upon to do so, have made the contemplated conveyance. If therefore such conveyance could have been made in performance of the contract according to its terms, can it be said that a right of action had in fact accrued to recover the purchase-money? Both conditions did not exist at the same time. But when, within the fair meaning of the contract, the right to reimbursement arose, the right of the defendant to make the conveyance pursuant to the contract terminated. And it was not intended by the contract that the defendant should be embarrassed in making a conveyance pursuant to it by the mere fact that a defect existed in the proceedings prior to the sale, but that the denial of that right and liability to repay the purchase-money should be dependent upon discovery of the defect. This view would seem to lead to the conclusion that the discovery was the fact upon which the right of action for the reimbursement depended, and that

then the cause of action for such relief should first arise; but the time within which such cause may accrue and the remedy be made available must have some relation to that which the lien, and perhaps the right to specific performance, would otherwise exist; for it evidently was not in the contemplation that any remedy would survive the period during which the lien given by a valid certificate would continue.

The right of action for specific performance, unless saved by some statute, would be barred at the end of ten years after the expiration of the time for redemption (Bruce *vs.* Tilson, 25 N. Y., 194.) That ten years expired before this action was commenced. The statute of limitations has relation to the remedy only, and while it might be made available to defeat the remedy, it would not affect or curtail the lien of a valid sale (Wattermere *vs.* Westover, 14 N. Y., 16). That is supposed to continue twenty years (Fisher *vs.* Mayor, 67 N. Y., 73). The statute providing the means by which a person claiming an interest in the premises sold for taxes in the city of Brooklyn may by filing of notice limit the time for taking the conveyance pursuant to such a sale also provides that such term is extended until the expiration of six months from the time of filing the notice, when the lien shall cease. (L. 1865, ch. 721, sec. 12.)

This statute does not have the effect when no notice is filed to extend the lien of a certificate given on a sale for taxes beyond the time which it otherwise would continue; but it may be construed in such event to so extend the time within which a conveyance may be required as to obviate the ten years statute of limitations in seeking specific performance. The time to seek conveyances was not limited by any notice, and, within the meaning of the statute, if the certificates had been valid the right to obtain such conveyances, unless terminated by such notice, would continue during the existence of the lien. It is, however, suggested that this statute has no application to the certificates in the

present case, because they never were liens upon the premises mentioned in them. It is true they were not liens; but in the contemplation of the parties when the certificates were made and until their invalidity was discovered conveyances were to be made and taken pursuant to the contract; and while in that view it was assumed that such right continued it may be seen that the discovery of the irregularity which defeated the ability of the defendant to convey produced the remedy to recover back the purchase-money. We have thus far proceeded as if no time was designated by the contract for its performance, and that therefore the discovery of such irregularity at any time during which the lien of valid certificates would continue enabled the purchaser to assert his claim for reimbursement of the purchase-money. In view of the statute on the subject, as well as by the terms of a certificate like those here, the time of performance of the contract represented by it was on the expiration of two years from the time of the sale.

No redemption of the premises being in the meantime made, the rights of the parties to the certificate may have been treated as then fixed, so as to entitle the purchaser to a conveyance, unless some irregularity in the proceedings prior to the sale was discovered. In the latter event he would be entitled to repayment of the purchase-money. No such discovery in the cases in question having been made, the collector of taxes and assessments may have fully discharged his duty and the liability of the defendant by making to the purchasers instruments purporting to convey the estates mentioned in the certificates. This was contemplated by the statute as it then was (L. 1854, ch. 384, title 5, sec. 33) and as it has since remained (L. 1873, ch. 863, title 8, sec. 9). So far as appears, the collector, prior to the act of 1873, did not, nor did the registrar of arrears thereafter and before the discovery of the invalidating irregularity in the proceedings, make any such conveyance. There was nothing required by the statute or by the certificate of the purchaser

to entitle him to the conveyance or to move the collector or registrar of arrears to make it. And in that view the question may arise whether the omission to make the conveyances as well as to seek to obtain them may not be treated as an extension of the time of performance of the contracts by the acquiescence of the parties. Time was not necessarily of the essence of the contract as between the city and the purchasers, and the defendant did not nor did the purchasers do anything to make it so or to terminate the time of performance until in 1882, when the plaintiffs first demanded conveyances, which were refused. The contracts, therefore, as against the defendant continued effectual, open, and unperformed until the discovery in that year of the irregularity in the proceedings prior to the sales, which invalidated the certificates from the beginning. (Gilbert vs. Danforth, 6 N. Y., 385.)

After such discovery performance could not be accomplished by making conveyances. If these views are correct it would seem that the right of the plaintiffs then arose to assert the claim for repayment of the purchase-money as to the certificates to which they had title, and which if valid would have continued to be a lien. The irregularity was discovered in December, 1882. The demand of payment and tender of the certificates were made in July, 1883, and this action was commenced shortly thereafter and in the same month. It is urged that the plaintiffs had no title to the certificates, which they claimed to own by virtue of the assignments made to them, because no notice was filed pursuant to the statute, which provided that "no assignment of any certificate given on the sale of lands for any taxes or assessments shall have any effect until notice of the same, with the name and residence of the assignee, shall be filed in the office of the collector of taxes and assessments of the district in which said lands are situated." (L. 1854, ch. 384, title 5, sec. 26; L. 1873, ch. 863, title 8, sec. 7.)

The certificates ran to the purchasers and their assigns;

and while the defendant might, for the purpose of performance of the contracts contained in them, treat the purchasers as the parties entitled to the benefit of them until such notice should be filed, the right upon which this action is founded is in practical effect the assignment of the claim to the moneys paid upon the purchases, or the liability of the defendant created by the contracts to pay it, and unless some relief is given by some intervening act of performance, which does not appear, we think that provision of the statute is not available as a defense (Chapman *vs.* City of Brooklyn, 40 N. Y., 372). These certificates are not negotiable instruments, and the mere indorsement of them by the purchasers would not be effectual to transfer them or the claim to the purchase-money. This situation seems to have been applicable to a few only of the certificates held by the plaintiffs. As to them, such indorsement alone was insufficient evidence to establish title in the plaintiffs. In the view taken, it is not essential to refer to the legislation had and the action taken to supply the deficiency in funds for municipal purposes, occasioned by the invalidity of assessments which had been made, although it was the subject of consideration in the court below; but it may be observed that in 1883 provision was by statute made to make valid assessments of arrears of unpaid taxes assessed prior to July 1, 1882; and it was provided that all taxes, assessments, and water rates unpaid, for which sales had been made, which sales were for any reason invalid, should be deemed to be in arrears from the date when they were levied or attempted to be levied or confirmed. (Laws 1883, ch. 114.)

It is claimed on the part of the plaintiffs that thereupon the city proceeded to relevy taxes and assessments upon the premises and collected them, and thereby twice received payment of the moneys for which this action was brought. As found by the trial court, this was not necessarily so as to the whole amount. The court found that pursuant to that act of 1883 the city authorities levied upon each of the par-

cels of land a tax or assessment for some amount in lieu and stead of those in question, but that the amount so relevied did not appear. These facts tend to show that the city made such assessments by way of relevy as were deemed essential to supply the deficiency caused by or resulting from the irregularities in previous assessments, including those for which sales had been made, and that the statute of 1883 was passed to meet that necessity. It is not seen that the plaintiffs were entitled to recover interest prior to the time the demand of payment was made, nor were they entitled to recover anything by way of indemnity for costs incurred by them in defense of an action brought by one Barnard, in which they were made defendants and in which was involved the question of the validity of the certificates as liens. They had no rights as against the defendant except such as were given by the contracts contained in the certificates, and those were to a conveyance unless irregularities were discovered in the proceedings prior to the sales, and in that case they were entitled to repayment of the amount of the purchase-money as represented by the certificates of which they had the title.

These views lead to the conclusion that the statute of limitations was not a bar to the action, and that the judgment should be reversed and a new trial granted, costs to abide the event.

"All concur."

A copy.

H. E. SICKELS,
Reporter,
Per C.

Supreme Court of the

October Term,

No. [illegible]

GEORGE S. WHEELER, Plaintiff

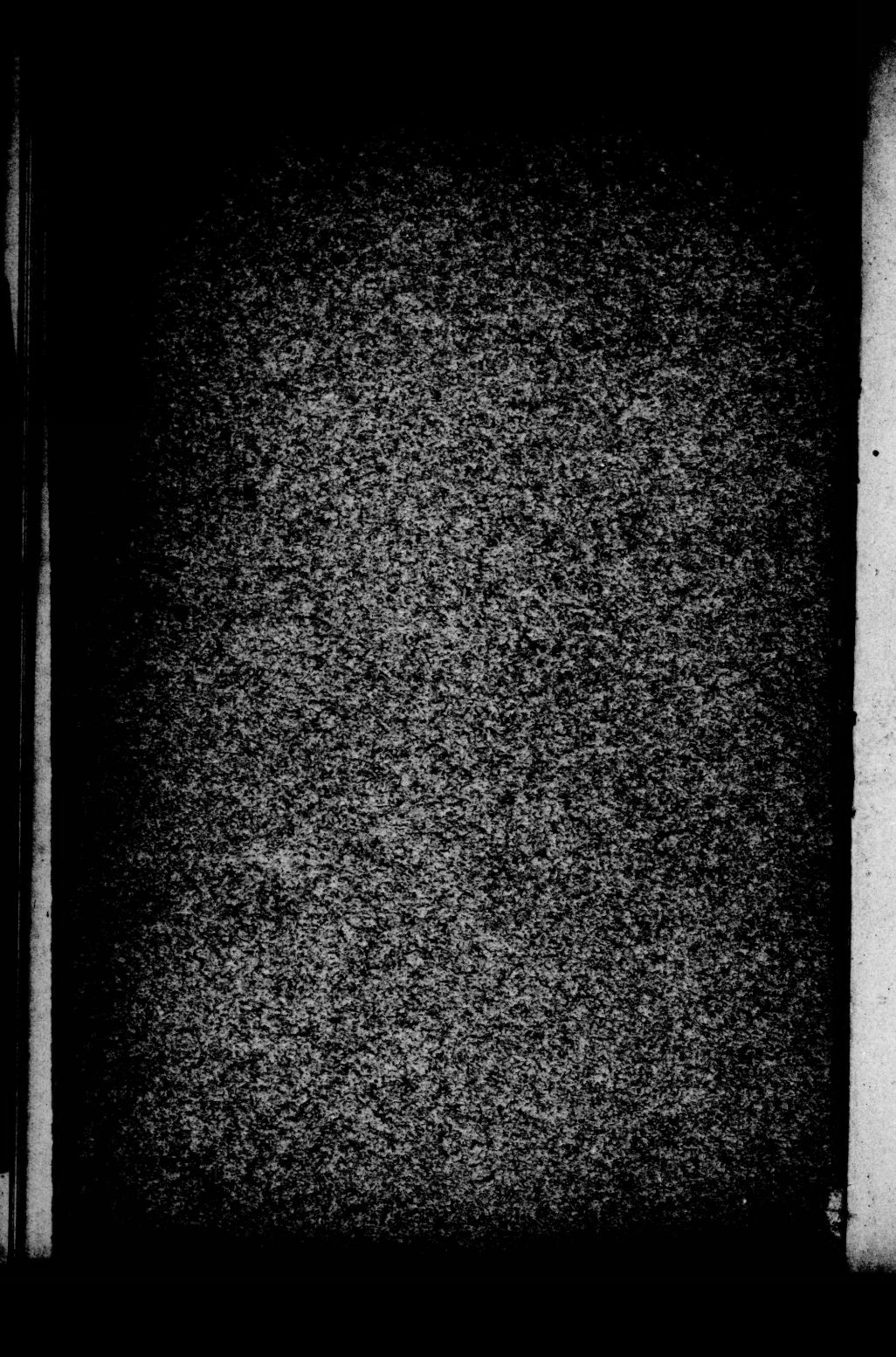
against

THEODORE F. JACKSON, as [illegible]
of the City of Brooklyn,
Defendant.

BRIEF OF DEFENDANT [illegible]

[illegible]

Corporation Counsel,
for the Defendant.



Supreme Court of the United States

OCTOBER TERM, 1890.

No. 65.

GEORGE S. WHEELER, PLAINTIFF IN ERROR,

against

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Brief of Defendant in Error.

STATEMENT.

The plaintiff is a purchaser at certain tax sales held in the city of Brooklyn. He attacks section 15, chapter 405, Laws of New York, 1873, as repugnant to Article I., Section 10, of the Constitution of the United States, and to Article 5 of the Amendments.

I.

THE CONTRACT RIGHTS OF THE DEFENDANT STATED.

The taxes upon which the sales in question were based were laid and imposed by the City of Brooklyn.

The Charter of 1854, Chapter 384, Laws of 1854, at title 5, relates to the collection of taxes and assessments. Section 26

thereof provides: "If any such tax or assessment remain unpaid on the day specified in said notice, the collector shall proceed to sell, by public auction, at the City Hall of said city, the property on which said tax or assessment shall have been imposed, for the lowest term of years, for which any person will take the same, and pay the amount of such tax or assessment, with the interest or expenses, and he shall continue the sale from time to time until all such lands shall be sold. He shall thereupon deliver to the purchaser a certificate of such sale, and note the same on the original tax or assessment rolls, and on the abstract hereinbefore directed to be kept in his office. Such certificate of sale shall be recorded in the Collector's office in proper books kept for that purpose, and shall constitute a lien upon the lands and premises therein described, after the same shall have been so recorded; and no assignment of any certificate given on the sale of lands for any taxes or assessments shall have any effect until notice of the same, with the name and residence of the assignee, shall be filed in the office of the Collector of Taxes and Assessments of the district in which such lands are situated."

Section 29 thereof provides: "The owner, mortgagee, occupant, or any other person interested in such lands may, at any time within two years after the sale for either taxes or assessments, redeem the said lands by paying to the Collector of Taxes an assessment in the district in which said lands are situated, for the use of said purchaser, the said purchase money, together with any other tax or assessment which the said purchaser may have paid, chargeable on said land, and which he is hereby authorized to do, provided a notice thereof has been filed in the office of such collector, with fifteen per cent. per annum in addition thereto, and the certificate of such collector, stating the payment and showing what land such payment is intended to redeem, shall be evidence of such redemption. The mortgagee shall have power to redeem at any time until after the expiration of six months specified in the twenty-seventh section of this title."

Section 33 provides: "The collector of the district where the lands sold for any tax or assessment shall not have been redeemed as by the act provided, shall execute to the purchaser or his assigns, pursuant to the terms of sale, a proper conveyance of the lands so sold by him, which shall contain a brief statement of

the proceedings had for the sale of said lands, and shall be evidence that such sale and proceedings were regularly made and had according to the provisions of this act. He shall also forthwith note the same on the assessment rolls and abstract kept in his office. The grantee shall be entitled, as against all persons whomsoever, to the possession of said premises, and to the rents, issues and profits thereof, pursuant to the terms of his conveyance, and shall be entitled to obtain possession of his lands by summary proceedings, in the same manner as is provided by law for the removal of persons who hold over or continue in possession of real estate sold by virtue of an execution against them."

The charter of 1873, Chapter 863, Laws of 1873, substituted the Registrar of Arrears for the Tax Collector, so far as the sales for arrears of taxes were concerned.

Section 5 of that title provides that if any such taxes or assessments for benefit of water rates shall remain unpaid on the day specified in said notice, (*i. e.*, "of sale,") the said Registrar shall proceed to sell at public auction at his office the property on which said taxes or assessments for benefits or for water rates shall have been imposed at the lowest term of years for which any person will take the same, and pay the amount of said taxes or assessments for benefit or for water rates, with interest and expenses. * * * The Registrar shall deliver to the purchaser complying with the terms of such sale a certificate of such sale and note the same on account of unpaid taxes and assessments for benefit or for water rates, and also on the original tax or assessment rolls and lists, and on the abstract hereinbefore directed to be kept in his office. Such certificate of sale shall be recorded in the Registrar's office, in proper books to be kept for that purpose, and shall from the time of sale constitute a lien upon such lands and premises therein described after the same shall have been so recorded.

Section 8 provides that the owner or mortgagee may have two years after the sale within which to redeem his property.

At the end of the section a provision runs: "If such moneys shall not be paid according to said notice, such Registrar shall proceed to execute a conveyance of the property so sold as hereinafter provided." Section 10 provides: "The Registrar shall execute to the purchaser or his assigns, pursuant to the terms of sale,

when the lands sold for any taxes or assessments for benefit of water rates shall not have been redeemed as by this Act provided, a proper conveyance of the lands so sold by him."

Thus by the scheme in force at the time the plaintiff's rights accrued the Registrar was authorized to sell a lease of the premises on which the arrears of taxes lay, to him who would bid the lowest term of years, and pay the amount of the arrearage. To such purchaser the Registrar was directed to make a conveyance and lease of the premises. When the plaintiff in error made his contract, he bought what the statute authorized us to sell and to convey, to wit: A lease of the premises. But for the sake of a possible redemption the lease was not to be given until two years had been afforded for that purpose.

If the contract was to be executed on the instant he would have received a lease for the premises. This, I take it, is the touchstone of the whole matter. The certificate of sale is nothing more than the official evidence of the contract of sale, which the statute prescribes, given to the purchaser to show that he has bought the lease, which in the case of no redemption he is to receive in two years after the sale. The execution of the contract is postponed only that there may be redemption. The postponement does not alter the subject matter of the contract and the statute. The certificate was issued as an executory contract that the purchaser might be protected during two years of possible redemption. It might be recorded and constitute a lien for his protection until his right to take a lease accrued. Thus the certificate is the official evidence of the anticipated title that the plaintiff acquired from the fact of the sale, and the witness of his right to receive the redemption money.

Black on Tax Titles, Sec. 160.

Thus the contract rights of the plaintiff in error were:

TO RECEIVE A LEASE AFTER THE LAPSE OF TWO YEARS IN CASE THERE WAS NO REDEMPTION IN THAT TIME, OR IN CASE OF REDEMPTION TO RECEIVE REIMBURSEMENT.

The certificate was the written official evidence of the contract, and was permitted to be filed in the office of the Registrar of Arrears as a lien to protect the inchoate rights of the purchaser,

inasmuch as he could not take his title until two years after the sale. It also was evidence to enable him to receive reimbursement out of any redemption moneys paid.

II.

Irrespective of Section 15 of Chapter 405, Laws of 1873, there was a limitation of the remedy of plaintiff.

(*a*) As to the lien of the tax.

Mayor vs. Colgate, 12 *N. Y.*, 140.
Fisher vs. Mayor, 67 *N. Y.*, 73.

Mayor vs. Colgate was an action to the enforce the lien of an assessment. Commenting upon the case in *Fisher vs. Mayor*, *supra*, the Court, per ANDREWS, *J.*, say: "Opinions were delivered by GARDINER and DENIO, *J.* Both concurred in the opinion that the action was not barred (*i. e.*, by six years), and that the right to enforce the lien continued for twenty years from time of assessment. GARDINER, *J.*, was of the opinion that the order for confirmation was in the nature of a judgment, and that the rule applicable to an action on a judgment applied to the case; and DENIO, *J.*, places his opinion on the ground that the assessment is to be considered as in effect a mortgage, as well in regard to the time of commencing an action upon it as in other respects. There was no question but that the action was subject to some limitation, and the Court concurred in the result which was reached in both opinions that the limitation was twenty years. This must be regarded as a decisive adjudication of this question."

(*b*) As to the action under the contract.

Bruce vs. Tilson, 25 *N. Y.*, 194.
White vs. Brooklyn, *N. Y. Ct. of Appeals*, *October* 7, 1890.

These cases held that the limitation of the action for the conveyance under the contract is ten years.

This Court recognizes the statutes of limitations of the States, and the construction thereof by the highest State courts.

Leffingwell vs. Warren, 2 *Black*, 599–603.
Barrett vs. Holmes, 102 *U. S.*, 651.

In *Leffingwell vs. Warren, supra*, the Court *per* SWAYNE, *J.*, say, "The Courts of the United States in the absence of legislation upon the subject by Congress recognize the statutes of limitations of the several States, and give them the same construction and effect which are given by the local tribunal. They are a rule of decision under the 34th section of the Judicial Act of 1789. The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute and is as binding upon the courts of the United States as the text."

Thus before the enactment of the statute now before the Court there was a limitation to an action on the lien and an action on the contract for a conveyance.

Chapter 405 of the Laws of 1885 amended the existing laws regulating the sale of lands for taxes, but the sale covered by this purchase had been acquired before the amendment of this statute.

Section 15 of that statute, however, provides as follows: "None of the provisions of this act hereinbefore contained shall effect any sale for taxes, assessments or water rates hereinbefore named in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed; provided, however, that no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn, or the Registrar of Arrears of said city, to compel the execution or delivery of a lease upon any sale for taxes, assessments or water rates made more than eight years prior to the passage of this act, unless such action or special proceeding is commenced within six months after the passage of this act, and notice thereof filed in the office of the Registrar of Arrears, but this provision shall not operate to extend any statute of limitation now applicable in such cases. And after the expiration of six months from the passage of this act it shall be the duty of the Registrar of Arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no lease shall have been given, and no action commenced, and notice thereof filed as aforesaid, within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

This statute is one of limitation which acts on the remedy and does not affect the contract. It is a constitutional exercise of the legislative power so long as it leaves a reasonable time for action before interposing the barrier of limitation.

Sturgis vs. Crownshield, 4 *Wheat.*, 122, *at page* 154.
Terry vs. Anderson, 95 *U. S.*, 628.
Koshkoning vs. Burton, 104 *U. S.* 668, 675, 676.
Gilfillan vs Union Canal Co., 109 *U. S.*, 401.
Cooley's Cons. Lim., 451.
Barrett vs. Holmes, 102 *U. S.*, 651.
Acker vs. Acker, 81 *N. Y. Rep.*, 184 *at page* 148.

In *Terry vs. Anderson*, *supra*, the Court, per Mr. JUSTICE WAITE, say: "It is difficult to see why, if the Legislature may prescribe the limitation where none exists before it may not change one where it has already been established. The parties to the contract have no more a vested interest in a particular limitation which has been fixed than they have in the unrestricted rights to sue. They have no more a vested interest at the time of the commencement of the action than they have in the form of the action to be commenced, and as to the form of the action or modes of remedy, it is well settled that the Legislature may change the same at its discretion, provided adequate means of enforcing the right remain. In all such cases the question is one of reasonableness, and we have, therefore, only to consider whether the time allotted in this statute is under all the circumstances reasonable; or that the Legislature is primarily the judge, and we cannot overrule the decision of that department of the government unless a palpable error has been committed."

In *Koshkoning vs. Burton*, *supra*, the Court, per Mr. JUSTICE HARLAN, say: "It was undoubtedly within the constitutional power of the Legislature to require as to existing causes of action that suits for their enforcement should be barred unless brought within the period less than that prescribed at the time the contract was made, or the liability incurred from which the cause of action arose. Exertion of this power is, of course, subject to the fundamental condition of a reasonable time, taking all the circumstances under consideration be given by the new law, for the commencement of an action before the bar takes effect."

There can be no question as to the reasonableness of the time. The plaintiff in error was not affected by the statute, unless the sales had been made eight years before the passage of section 15 (see the section). Therefore he was one who had omitted, at the end of the *two* years, to take or demand his lease, and who had continued to sleep upon his rights for *six years*. The statute provides that unless he commences his action or proceeding to obtain his lease under his contract within six months, he is barred. He could have commenced his action within one day. His proof was record proof at hand, for his certificate was on file in the office of the Registrar of Arrears. He commenced this very action within six months after the passage of the statute, and, therefore, he was able to have commenced his action or proceeding for a lease.

To recapitulate:

Before the statute was passed there was a limitation as determined by the Court of Appeals—

(*a*) As to the lien of a tax.

(*b*) As to the time to commence an action on an agreement for a conveyance.

(*c*) The present statute simply shortened the time of limitation, after giving ample notice with full protection to existing claims.

III.

The argument of the plaintiff is based on a misconstruction of the contract.

At page 6 of his brief he states:

"The purchaser became possessed of two rights defined in the statute, the right of a lease for a stated term of years and an action at law for ejectment or summary proceedings to obtain possession of the land, and the further right to bide his time and not to take out a lease and engage in a litigation to secure the land itself. Plaintiff in error seeks to secure through the operation of the record of sale in the office of the Registrar, a very profitable return on his money which the owner of the land is by the statute compelled to pay for its redemption. These two rights are separate and distinct rights."

The plaintiff insists then that the statute empowered us to sell, and that under the statute he bought, a lease, and also "separate and distinct" therefrom, a right to record the evidence of his lease, or the executory contract for the lease, as a sort of perpetual lien. That is, the City sold not only a lease, but apart from it, an executory contract which might be recorded as a perpetual lien—a sort of investment like a mortgage.

There is nothing in the statute which gives color to such claim.

The collector is "to sell *the property for the lowest term of years.*" "If such moneys for redemption shall not be paid, *the collector shall proceed to execute a conveyance of the property so sold.*" "The collector shall execute to the purchaser, pursuant *to the terms of sale, a proper conveyance of the land,* and the grantee shall be entitled to the said premises."

Such are the expressions of the statute touching the subject matter of the contract.

The certificate is the official evidence of the sale—the written contract which in its very terms refers to a sale of the land. It is termed "a certificate of such sale." It is provided that it may be recorded as "such certificate of sale."

The plaintiff argues the certificate may be recorded as a lien, and therefore it is as much the subject matter of the contract as the sale of the premises. But the provision for the record of the certificate and its lien is made auxiliary to the sale of the land and simply to protect the purchase.

The statute affords two years for redemption. In order that the purchaser may be protected during the time that must elapse before he can take his lease, the law naturally provides that he may protect his sale. The only adequate protection is the privilege of recording his contract so that it may be a lien, otherwise there is nothing to hinder the owner from cutting off the purchaser by alienation during redemption time. That this right of record and of lien is assured until the lease can be taken, affords no cogent argument that it was the sense of the contract that no lease need be taken, or that a right necessarily incidental to the assurance of the expressed subject matter of

the contract might be erected into an independent and additional subject matter thereof. The certificate or record is not in the category of judgments or mortgages, but rather like a *lis pendens* or mechanics' lien.

The plaintiff cites but one case as sustaining his contention, *Curtis vs. Whitney*, 13 *Wall.* I do not find that the text sustains the claim. On the contrary, Mr. JUSTICE MILLER, at page 71 of the report, says: "While she (the purchaser) had the right to receive either her lease or the money at the end of two years, the owner of the land had the right to pay the money and thus prevent a conveyance. These coincident rights of the parties grow out of the contract by which the land was sold for taxes."

The argument of the plaintiff is that the statute up for review "operated to destroy the security upon which the purchaser relied when advancing his money at the sale—the security which formed part of the contract represented at that sale" (page 10 of plaintiff's brief).

But is this so? The plaintiff bought what the statute empowered us to sell—a lease at the end of two years in case of no redemption, or in the alternative of redemption, a refund. Until the lease could be given or the refund on possible redemption made, —the security was the record and lien of the contract. But the contract contemplated a lease. At the end of two years the plaintiff did not seek to complete his contract. Now comes the Legislature to enact that if he has not acted to reduce his inchoate right for six years, he must do so within six months' further time or else forfeit his remedy, and with it forfeit the record and the record lien of his contract for the lease. Until the plaintiff can show that his contract gave him the right to record his certificate as in the nature of a perpetual lien, separate and distinct from the very subject matter of the certificate, there is no force in his argument. The law only made the security of record and of lien as preliminary to the lease. The amendment shortens the time within which he must seek the lease.

The Registrar is not to cancel the sale so far as it affects the contract right, for the first paragraph of section 15 expressly confirms the sale. The statute acts on but the remedy.

The sale made contemplated the issue of a lease within two years. The certificate was the official evidence of the contract. The certificate was delivered to the purchaser and the Registrar was to note the same sale on the original tax and assessment rolls and on the abstract directed to be kept in his office, and the certificate was to constitute a lien as recorded in his office. These provisions as to the noting of the sale and the recording of the certificate were for the protection of the purchaser until he could complete his contract after redemption time. He has neglected to complete his contract for six years; the statute calls upon him to commence to act upon his remedy within six months, or the remedy is barred; that is the limitation of six years and six months is a statute of limitations as against the remedy. If the remedy thus dies then the record which protects his contract rights, so far as the remedy on them is concerned, in the office of the official who is charged with the duty of executing the contract, serves no further purpose. The provisions were for the protection of the purchaser; if he fails to act for his own protection after full and fair notice, the statute cuts off his remedy, and the provisions which were merely incidental to the protection of his remedy under the contract which can no longer be asserted, have no claim to life.

It is in the interest of public policy that contracts should be completed. There is no reason why a mere agreement representing an acquired but neglected right should be made a lien in the office of the Registrar of Arrears, after the purchaser has been cut off from his remedy on his contract.

Granting that the Legislature has the power to shorten the statute of limitations, it also has the power to cancel that whose existence is simply for the purpose of preserving to the owner the right of action so long as the statute of limitations does not bar him. When he can no longer pursue his remedy, the assurance of which was the sole purpose of the record in the office of the Registrar of Arrears, then the reason for the existence of that record ceases.

This statute then is simply one of limitations. The lien of the plaintiff would have ceased with the lapse of time. This statute simply shortens the limitation, affording a reasonable time within which the plaintiff could act, and with the shortening of the